Supreme Court, U.S.
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No. 03-

IN THE

Supreme Court of the United States

CM TAX EQUALIZATION FOUNDATION, INC., *et al.*,

Petitioners,

v.

COLUMBUS-MUSCOGEE COUNTY CONSOLIDATED GOVERNMENT, *et al.*,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF GEORGIA

PETITION FOR A WRIT OF CERTIORARI

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106 pp

QUESTIONS PRESENTED

1. In 1982, pursuant to a unique "local constitutional amendment" Muscogee County, Georgia, froze for ad valorem property tax purposes the assessed value of owner-occupied homes in the County. Do the more stringent requirements for repealing this unique local constitutional amendment violate the Fourteenth Amendment?

2. Does the Georgia Constitution violate the Equal Protection Clause by arbitrarily and capriciously exempting Muscogee County from its otherwise applicable provisions requiring that comparable properties be taxed uniformly based on their fair market value?

3. Does the valuation freeze violate the Privileges and Immunities Clause and the constitutionally protected Right to Travel?

4. Does the valuation freeze violate basic principles of Equal Protection as enunciated by this Court in *Allegheny Pittsburgh Coal Co.* v. *County Commission*?

RULE 29.6 STATEMENT

Pursuant to Supreme Court Rule 29.6, petitioners state that the CM Tax Equalization Foundation, Inc. is a non-profit corporation.

PARTIES TO THE PROCEEDINGS

Under the provisions of a "local constitutional amendment" effective only in Muscogee County, Georgia, the value of a home in the County is frozen for ad valorem tax purposes at its 1983 value or its value when last sold, whichever is latest.

Petitioner CM Tax Equalization Foundation, Inc., is a private, non-profit corporation established and supported by a group of Muscogee County citizens concerned by the inequities inherent in their county's property valuation freeze. The individual Petitioners are Georgia residents who represent a cross-section of the homeowners and renters burdened by the valuation freeze.

Respondent Columbus-Muscogee County Consolidated Government is the municipal government governed by the valuation freeze. Respondent Muscogee County Board of Tax Assessors is responsible for determining the taxability of property for ad valorem tax purposes, and for the appraisal, assessment, and equalization of all assessments within the County. Respondent Lula Lunsford Huff, in her official capacity as Muscogee County Tax Commissioner, is responsible for performing all functions related to billing, collecting, disbursing, and accounting for ad valorem property taxes collected in the County. Respondent Muscogee County Board of Equalization is responsible for hearing and adjudicating administrative appeals as to values, denials of claimed exemptions, and taxability of property values and assessments made by the Board of Tax Assessors.

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PETITION FOR A WRIT OF CERTIORARI

Petitioners respectfully petition for a writ of certiorari to review the judgment of the Supreme Court of Georgia in this case.

OPINIONS BELOW

The Muscogee County Superior Court's Order Granting Plaintiffs' Motion For Summary Judgment (App. 13a-31a) is unpublished. The opinion of the Georgia Supreme Court reversing the trial court (App. 1a-12a) is reported at 579 S.E.2d 200 (Ga. 2003).

JURISDICTION

The judgment of the Georgia Supreme Court was entered March 24, 2003. (App. 1a.) By order dated June 18, 2003, Associate Justice Anthony M. Kennedy extended the time to file this Petition until July 22, 2003. The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(a).

CONSTITUTIONAL PROVISIONS INVOKED

The following constitutional provisions are included in the Appendix:

Ga. L. 1981, pp. 1926-27; Ga. Const. art. VII, § 1, ¶ 3(a); Ga. Const. art. VIII, § 6, ¶ 1(a); Ga. Const. art. X, § 1, ¶ 1; U.S. Const. art. IV, § 2, cl. 1; U.S. Const. art. IV, § 4; U.S. Const. amend. XIV, § 1.

STATEMENT OF THE CASE

This petition presents questions regarding the constitutionality of a "local constitutional amendment" that allows a single Georgia county to impose vastly different property taxes on comparable property, notwithstanding other provisions of the Georgia Constitution that require ad valorem taxes to be

assessed uniformly throughout the county based on the property's fair market value. Only Muscogee County's citizens are subject to this inequity. This unique provision is shielded from normal political attack – although it took *only* a local act of the state legislature to continue the freeze after local constitutional amendments were abolished, the repeal of the freeze would require *both* the passage of an act by the state legislature *and* a majority vote of the County's residents. The exemption of Muscogee County from otherwise applicable constitutional protections and the stringent requirements for repealing the valuation freeze violate the Fourteenth Amendment to the United States Constitution.

Furthermore, because the freeze imposes a disproportionate share of Muscogee County's tax burden on out-of-state newcomers, the freeze violates the Privileges and Immunities Clause and the constitutionally protected right to travel. Finally, the freeze (coupled with the effects of a separate "inflation adjustment" adopted by the County from 1982 to 1992) results in such disparities in taxation on similarly situated properties (up to 4000%) as to violate the Equal Protection Clause.

Seeking relief from the inequities caused by the County's valuation freeze, Petitioners filed an action in the Superior Court of Muscogee County, Georgia, alleging that the valuation freeze is unconstitutional under the United States and Georgia Constitutions. As is discussed further below, both the trial court and the Georgia Supreme Court addressed Petitioners' claims under the United States Constitution. Both the trial

court's order and the Georgia Supreme Court's opinion are included in Petitioners' Appendix.

STATEMENT

I. The Valuation Freeze and Pertinent State Constitutional Provisions

Muscogee County, Georgia ("the County") has frozen, for ad valorem property tax purposes, the assessed value of owner-occupied residential property in the County. Rather than basing property taxes on current market value (as is otherwise required by Georgia's laws and constitution), the County taxes owner-occupied property based on the home's value on the latter of three dates: (1) January 1, 1983, (2) January 1 of the first year in which a homestead exemption[1] is claimed and allowed, or (3) January 1 of the year following the last change in ownership. (App. 15a.) Under the valuation freeze, a property's frozen value remains the assessed value until the property is sold or transferred at death to someone other than a spouse. (*Id.*) Only then, when in the possession of the new homeowner, will the property be revalued at its current fair market value. (*Id.*) In this "welcome stranger" system, recent home purchasers in Muscogee County – including those who move into Muscogee County from out-of-state ("newcomers") – find themselves paying remarkably higher property taxes, based only on when they acquired their homes. The freeze likewise burdens people who rent property

[1] Under Georgia law, property owners meeting certain qualifications can exempt from taxation a portion of the value of their homes.

because rental property is exempted from the freeze and the resulting higher taxes are passed on to renters through increased rents. (*Id.* 20a.) The valuation freeze does not allow for consideration of financial means, ability to pay, age, disability, or hardship. Date of purchase counts for everything.

Imposing the freeze required a constitutional amendment (as opposed to a statute) because two provisions of Georgia's Constitution require counties to assess taxes uniformly based on an individual property's fair market value. Ga. Const. art. VII, § 1, ¶ 3(a) (known as the "Uniformity Clause") ("all taxation shall be uniform upon the same class of subjects within the territorial limits of the authority levying the tax."); Ga. Const. art. VIII, § 6, ¶ 1(a) ("assessed value of all taxable property within the territory served by [the] school system.").

II. The Enactment of the Freeze

Because of these constitutional provisions, the County's only hope for implementing a valuation freeze was to use the long-discredited and now-defunct "local constitutional amendment" ("LCA") process. When the freeze was enacted in 1982, Georgia's Constitution allowed for constitutional amendments applicable to only specific political subdivisions. Ga. Const. of 1976, art. XII, § 1, ¶ 1. These local constitutional amendments could become a part of Georgia's Constitution if approved by two-thirds of the members of each house of Georgia's General Assembly and a majority of the voters in the affected political subdivision. *Id.*

Recognizing the difficulty created by having a myriad of constitutional amendments applicable only to particular localities,[2] Georgia adopted a new constitution, which became effective in 1983, that specifically forbade any new local constitutional amendments. Ga. Const. art. X, § 1, ¶ 1.

The valuation freeze was approved by the County's voters in the same general election that approved the new constitution forbidding any future local constitutional amendments. Thus, by enacting the freeze just before the new constitution became effective, the County ensured that it would be the only political subdivision in Georgia that would have an LCA specifically allowing it to violate Georgia's Uniformity Clause.

The 1983 Constitution also phased out then-existing LCAs by July 1, 1997, with a limited exception: then existing LCAs could be continued in effect beyond July 1, 1987, by local act of the General Assembly (subject to a local referendum if desired by the legislature) or by an ordinance adopted by the local governing authority in the affected political

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[2] The Georgia Supreme Court stated in 1982:

> The tendency to amend the Georgia Constitution by amendments which apply solely to an isolated political subdivision of the State has met considerable criticism. It has been calculated that between 1947 and 1967, the Georgia Constitution was amended 549 times; 466 of these amendments had local application only.

Sims v. *Town of Baldin*, 290 S.E.2d 433, 435 (Ga. 1982).

In an earlier opinion, the court declared that "[w]e agree that the fundamental law of our State, the Constitution, by this method is being undermined and destroyed." *Roberts* v. *Suttles*, 91 S.E.2d 32, 34 (Ga. 1956).

subdivision. Ga. Const. art. XI, § 1, ¶ 4(a). In the case of the County's valuation freeze, the General Assembly passed a local act that continued the LCA in effect. *See* 1986 Ga. L. 3800.

Because the valuation freeze is a part of Georgia's Constitution, it can be repealed only by a local act of the General Assembly affirmed by a majority of the locality's qualified voters. Ga. Const. art. XI, § 1, ¶ 4(b). Whereas continuing the freeze in effect required no more than a local ordinance or a local act of the state legislature (with or without a local referendum), repealing the valuation freeze is conditioned on *both* a local act and approval of a majority of the county's voters. The effect of this difference became apparent in 1991, when the General Assembly passed a local act authorizing a referendum on whether the valuation freeze should be repealed. *See* 1991 Ga. L. 4255. Because repealing the freeze failed to garner a majority of the County's voters, the freeze remains in effect. (App. 35a-36a.)

III. The Effects of the Valuation Freeze

The valuation freeze produces glaring inequities in taxation among owners of comparably-valued homes in the County. For the year 2000, approximately 1773 homesteads in the County had a fair market value for ad valorem tax purposes of $75,000 (plus or minus 2.5%). Due to the valuation freeze and the County's Standard Homestead Exemption, 27 of these homeowners owed no County ad valorem tax at all; more than 110 other homes owed $110 or less; while approximately 840 homes of an approximate value of $75,000 were taxed

on the basis of their current fair market value and had a County ad valorem tax bill averaging $660. (App. 55a.)

At the other end of the economic scale, a home with a fair market value of $289,760 was subjected to County ad valorem tax of $1,226.94, while another home valued at $122,175 (or, less than half the former) was subjected to a County ad valorem tax of $1,210.26, approximately the same as the other (App. 60a-61a.); and a home currently valued at $451,517 was taxed by the County at $2,157.24, while another with a current value of $193,660 was subjected to a tax of $1770.10. (*Id.*)

IV. Proceedings Below

On June 24, 2002, the trial court granted summary judgment in Petitioners' favor and ruled that the valuation freeze violates the Georgia and United States Constitutions. (App. 13a-31a.) Although Respondents argued that the valuation freeze survived equal protection scrutiny under this Court's holding in *Nordlinger v. Hahn*, 505 U.S. 1 (1992), as a device for protecting existing homeowners from inflation, the court concluded that "[a]s an inflation control measure [the freeze] is far too extreme and too suspect to survive constitutional review." (App. 24a.) The trial court also found that the freeze violated the constitutionally protected right to travel because it "places newcomers in second-class status compared to the earlier arrivals who will generally constitute the majority of taxpayers." (App. 29a.) Finally, the trial court held that the freeze violated the Georgia Constitution's uniformity and equal protection clauses. (App. 25a.)

Respondents appealed to the Georgia Supreme Court. On March 24, 2003, the Georgia Supreme Court reversed the trial court's grant of summary judgment to Petitioners. (App. 1a-12a.) Although the court tacitly recognized that the LCA violated the Uniformity Clause, the court held that as a later amendment to Georgia's Constitution, the valuation freeze trumped any contrary provisions in the state constitution. The court also rejected Petitioners' federal constitutional challenges. (*Id.*)

REASONS FOR GRANTING THE WRIT

The decision of the court below threatens to wreak havoc with tax and other legal regimes throughout the nation. First, this Court has repeatedly reaffirmed that the Fourteenth Amendment establishes a right of equal access to the political process. Lower courts have struggled, however, with the precise contours of that right. The court below, for example, approved a constitutional system that stifles political challenges to the freeze by making the freeze more difficult to remove than it was to keep in effect. Furthermore, the freeze is insulated from change because its burden is felt by an ever present (but ever changing) group of newly arrived home-owners who, by definition, will always lack the political ability to end the valuation freeze. This holding does not square with the consistent rulings of this Court and demonstrates the importance of providing further guidance to lower courts.

Second, the Georgia Supreme Court's decision implicates important constitutional issues regarding the states' abilities to exempt particular localities from

constitutional protections that would otherwise apply. In essence, the Georgia Supreme Court held that a state is free to declare that its own constitutional protections stop when someone enters a particular municipality, county, or other political subdivision. Changing constitutional rules at the county line is clearly an equal protection violation.

Third, the valuation freeze violates the Privileges and Immunities Clause and the right to travel as well as the Equal Protection Clause. The Georgia Supreme Court is not alone in failing to follow this Court's Privileges and Immunities and right to travel doctrine; the Georgia Supreme Court explicitly followed a decision by the Supreme Court of Oklahoma. This Court itself signaled the importance of this doctrinal question by specifically reserving the question in *Hillside Dairy Inc.* v. *Lyons,* __ U.S. __, 123 S. Ct. 2142 (2003).

Fourth, petitioners do not question the Georgia Supreme Court's interpretation of Georgia law or Georgia's constitution. They do, however, challenge the permissibility, under the United States Constitution, of a state constitutional amendment, insulated from political challenges, and made applicable to only one county.

I. By Imposing More Stringent Standards for Repealing an LCA Than Were Required for Continuing It in Effect, the Georgia Constitution Violates the Fourteenth Amendment.

The Fourteenth Amendment forbids states to manipulate governmental structures to deny members of an identifiable group the opportunity to participate equally in the political process. This Court has consistently evaluated state laws that operate to impose such a denial under a standard of heightened scrutiny. For example, a state law that disenfranchises a particular group is reviewed under strict scrutiny. *See Kramer* v. *Union Free Sch. Dist.*, 395 U.S. 621, 626 (1969); *Cipriano* v. *City of Houma*, 395 U.S. 701, 706 (1969). The Court also applies strict scrutiny to assess population variations in electoral districts, *see, e.g., Reynolds* v. *Sims*, 377 U.S. 533 (1964), and to the possibility that ballots might be treated differently during a recount. *See Bush* v. *Gore*, 531 U.S. 98 (2000). The Court also reviews with heightened scrutiny state laws that limit the ballot access of small parties or unpopular political groups. *See Norman* v. *Reed*, 502 U.S. 279 (1992); *Burdick* v. *Takushi*, 504 U.S. 428 (1992); *California Democratic Party* v. *Jones*, 530 U.S. 567 (2000).

The reason for examining more closely a denial of equal opportunity to participate in the political process is simple: the premise underlying the Court's usual, deferential standard of review fails to hold in such cases. The justification for applying a mere rationality test is that "even improvident decisions will

eventually be rectified by the democratic process and that judicial intervention is generally unwarranted no matter how unwisely we may think a political branch has acted." *Vance* v. *Bradley*, 440 U.S. 93, 97 (1979); *see also Davis* v. *Bandemer*, 478 U.S. 109, 152 (1986) (O'Connor, J., concurring). Where, as in this case, a state discriminates against a particular group in the way the state structures its electoral and other political processes, the democratic process ceases to function as a reliable safeguard against oppressive exercises of state power. *See City of Cleburne* v. *Cleburne Living Ctr.*, 473 U.S. 432, 440 (1985) (such a measure "is unlikely to be soon rectified by legislative means.").

This Court applied these principles in the closely analogous case of *Hunter* v. *Erickson*, 393 U.S. 385 (1969). There the citizens of Akron, Ohio amended their city charter to forbid the city council to enact any fair housing ordinance unless the ordinance was approved by a subsequent referendum. The Court held the charter amendment invalid because it targeted legislation that would favor identifiable groups – primarily racial and religious minorities – and subjected it to more onerous requirements. The Court identified the constitutional defect of the Akron charter amendment: "[T]he state may no more disadvantage any particular group by making it more difficult to enact legislation in its behalf than it may dilute any person's vote or give any group a smaller representation than another of comparable size." *Id.* at 393 (citing *Reynolds* v. *Sims*, 377 U.S. 533 (1964); *Avery* v. *Midland County*, 390 U.S. 474 (1968)); *see also Washington* v. *Seattle Sch. Dist. No. 1*, 458 U.S. 457 (1982).

The Georgia LCA violates the constitutional principle of equal access to the political process. Through that process, the State of Georgia adopted as part of its Constitution a tax assessment system that heavily discriminates against an identifiable group, recent homebuyers. The State also ratified, at the same election, a new Constitution that repealed the LCA process and, with it, the possibility that recent purchasers could use the same process to redress the discriminatory tax burden.

Superficially, the Georgia Constitution appears to remedy this discrimination by providing that the discriminatory Muscogee tax assessment artifice would also be repealed. Any appearance of constitutional compliance is illusory, however. On abolishing the LCA mechanism, the Georgia Constitution also provided that the discriminatory Muscogee system, along with other extant LCAs, could remain in force if approved by a local act passed by the Georgia legislature (with or without a local referendum).[3]

The recourse that the Georgia Constitution provides recent homebuyers in Muscogee County adds a burdensome extra step. To repeal the Columbus-Muscogee LCA, recent homebuyers must first prevail upon the Georgia General Assembly to enact a local bill approving the repeal. Then, the repeal must be approved at a local referendum. This exclusive method of repealing the LCA is more burdensome than either of the options available to Muscogee County's entrenched

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[3] An LCA could also be continued if approved by a local ordinance.

majority to retain the LCA. The effects are not just theoretical; the Georgia legislature actually passed a local act authorizing the repeal of the Muscogee LCA, but the required referendum failed when Muscogee County's entrenched homeowners voted it down.

Georgia's LCA process is complex, but one feature is clear: the process discriminates against identifiable groups, such as recent homebuyers in Muscogee County, imposing a significant disadvantage on the ability of such groups to participate effectively in the political process. The Muscogee LCA is especially pernicious. It singles out a group that lacks political power today and that is peculiarly unlikely to emerge from that status. As to this case, the trial court specifically agreed and found that the class of recent home purchasers is peculiarly disabled from overcoming its status as a disfavored minority. (App. 29a) (finding that "earlier arrivals will generally constitute the majority of taxpayers"). Because the tax assessment scheme bestows its benefits and imposes its burdens based on length of residency, the identity of recent as opposed to established homebuyers will fluctuate. Over time, recent homebuyers will either move away or become long-time residents. In either event, they will cease to have an economic interest in repealing the discriminatory tax burden. Winning such a political victory requires a sustained investment of political participation, which is not apt to be forthcoming from a small class whose membership is constantly changing.

This unequal treatment of an identifiable group with respect to the ability of that group to participate in

the political process cannot satisfy the heightened scrutiny this Court has consistently applied to such laws. As this Court has repeatedly noted, the level of scrutiny is determined by the degree to which the State has infringed on the ability of a minority group to participate meaningfully in the political process. As the Court stated in *Norman* v. *Reed*, "we have called for the demonstration of a corresponding interest sufficiently weighty to justify the limitation ...." 502 U.S. 279, 288-89 (1992). *See also Anderson* v. *Celebrezze*, 460 U.S. 780, 789 (1983).

Petitioners suffer under a severe restriction on their access to the democratic process as a means of redressing the discriminatory Muscogee tax assessment scheme. This Court "require[s] any severe restriction to be narrowly drawn to advance a state interest of compelling importance." *Norman*, 502 U.S. at 289 (citing *Illinois Bd. of Elections* v. *Socialist Workers Party*, 440 U.S. 173, 184, 186 (1979)). Nevertheless, there is no legitimate state interest in imposing an additional hurdle on recent homebuyers to redress Muscogee's destructive tax artifice. As such, the complex LCA system by which the state authorizes the Muscogee tax assessment scheme fails to represent even a sufficiently reasonable means of advancing a legitimate state interest.

II. The Georgia Constitution Violates the Equal Protection Clause by Arbitrarily and Capriciously Denying Residents of Muscogee County Rights Provided to Other Georgia Citizens.

Georgia's Uniformity Clause prevents a taxing authority from "freez[ing] the assessed value of . . . property at an amount obviously below its fair market value." *Benson-Corwin, Inc.* v. *Cobb County Sch. Dist.*, 236 S.E.2d 361, 362 (Ga. 1977). Likewise, Georgia's constitution requires counties to impose a school tax "upon the assessed value of all taxable property" within the school district. Ga. Const. art. VIII, § 6, ¶ 1(a). As with the Uniformity Clause, this provision requires that property tax assessments be based on the property's fair market value. *Benson-Corwin. Inc.*, 236 S.E.2d at 362.

Despite the clear conflict between these provisions of the Georgia Constitution and the valuation freeze, the Georgia Supreme Court held that the valuation freeze "is valid despite any conflict with the uniformity clause" because it is a "subsequent amendment to the uniformity clause." (App. 4a.) But because Georgia's present constitution prohibits further local constitutional amendments, *see* Ga. Const. art. X, § 1, ¶ 1, no other county can have this authority. In other words, Georgia's Constitution grants to one county – and only one county – a complete exemption from two otherwise applicable constitutional provisions that would have prevented the County from enacting the freeze. It is as if upon entering Muscogee County,

these two provisions of Georgia's Constitution no longer apply.

Regardless of the defensibility of the Georgia Supreme Court's interpretation of Georgia law, to end the protections of Georgia's Constitution at the borders of Muscogee County fails to satisfy the "rudimentary requirements of equal treatment and fundamental fairness." *Bush* v. *Gore*, 531 U.S. 98, 109 (2000). Having granted Georgia's citizens the right to have their property taxes based on the fair market value of their property, the State cannot later arbitrarily and capriciously exempt residents of one particular county from that protection. *See id.* at 104-05 ("Having once granted the right to vote on equal terms, the State may not, by later arbitrary and disparate treatment, value one person's vote over that of another."). Even if freezing property tax valuations would otherwise be permissible, this Court's decision in *Bush* v. *Gore* prevents Georgia from allowing only one county to impose such a system.

There is no rational basis for Georgia's decision to deprive one group of citizens the constitutional protections that benefit every other citizen in Georgia. No special circumstances justify treating Muscogee County differently from every other county in Georgia. The inflation statistics cited by the County – which report on inflation throughout the urban south when the freeze was enacted (*see* App. 15a) – cannot support a one-county exemption from Georgia's otherwise generally applicable constitutional protections. Likewise, that Georgia's 1983 Constitution prevented more counties from enacting similar valuation freezes

merely begs the question why Muscogee County should be treated differently.

The Georgia Supreme Court's decision to reverse the trial court overlooks the fact that Georgia has – for no justifiable reason – decided to allow one county to exempt itself from otherwise applicable constitutional provisions. Georgia's decision to do so is arbitrary, capricious, and without justification. This Court should accordingly grant the petition to address whether a state can, consistent with equal protection, exempt a particular county from constitutional protections granted to all others in the state.

III. The Valuation Freeze Violates the Privileges and Immunities Clause and the Right to Travel.

Granting certiorari will give this Court an opportunity to clarify an issue mentioned, but not addressed, in *Nordlinger* v. *Hahn*, 505 U.S. 1 (1992), which upheld under rational basis scrutiny an equal protection challenge to California's Proposition 13. Because there was no evidence that the plaintiff in *Nordlinger* had moved to California from out-of-state, the Court did not there address whether so-called "acquisition value" tax systems violate the Privileges and Immunities Clause or the right to travel by causing newly arrived residents to pay more in property taxes than do similarly situated long-term residents. *See Nordlinger*, 505 U.S. at 10-11. Unlike in *Nordlinger*, Petitioners include individuals who pay higher taxes because they moved into Muscogee County from out of state after enactment of the freeze.

The Privileges and Immunities Clause and the right to travel share common history and purpose. *See Zobel* v. *Williams*, 457 U.S. 55, 78-81 (1982) ("History, therefore, supports assessment of Alaska's scheme, as well as other infringements of the right to travel, under the Privileges and Immunities Clause.") (O'Connor, J., concurring). Both prevent states from favoring their own residents over newcomers. *See Attorney General* v. *Soto-Lopez*, 476 U.S. 898, 903 (1986) (the right to travel prohibits "the unequal distribution of rights and benefits among otherwise qualified bona fide residents."); *United Bldg. & Constr. Trades Council* v. *Mayor & Council of Camden*, 465 U.S. 208, 215-16 (1984) (the Privileges and Immunities Clause was "designed to place the citizens of each State upon the same footing with citizens of other States, so far as the advantages and resulting from citizenship in those State are concerned") (internal quotation marks omitted). The tax freeze violates both these provisions by charging higher taxes to those who moved into Muscogee County from out-of-state.

A. The Freeze Violates the Privileges and Immunities Clause.

The Privileges and Immunities Clause provides that "[t]he Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States." U.S. Const. art. IV, § 2, cl. 1. The object of the clause is to "'strongly ... constitute the citizens of the United States one people, by plac[ing] the citizens of each State upon the same footing with citizens of other States, so far as the advantages resulting from citizenship in those States are concerned.'" *Lunding* v.

N.Y. Tax Appeals Tribunal, 522 U.S. 287, 296 (1998) (quoting *Paul* v. *Virginia*, 8 Wall. 168, 180, (1868)) (alteration in original).

The Privileges and Immunities Clause protects "those 'privileges' and 'immunities' bearing upon the vitality of the Nation as a single entity." *Camden*, 465 U.S. at 218 (quoting *Baldwin* v. *Montana Fish & Game Comm'n*, 436 U.S. 371, 383 (1978)). If a state law burden's such rights, the state must show that there is "substantial reason" for the difference in treatment. *Id.* at 222.

The valuation freeze burdens several rights protected by the Privileges and Immunities Clause, including the right to equal treatment in the imposition of taxes, *see Lunding*, 522 U.S. at 296 (1998), the right of outsiders to establish residency in Muscogee County, and the right of outsiders to purchase a home in Muscogee County. *See Zobel*, 457 U.S. at 76-77 ("It is difficult to imagine a right more essential to the Nation as a whole than the right to establish residence in a new State.") (O'Connor, J., concurring).

Nor can Respondents put forward a substantial interest for requiring newcomers to pay more in property taxes than long-time county residents. This Court's "cases have not identified any acceptable reason for qualifying the protection afforded by the Clause for 'the citizen of State A who ventures into State B to settle there and establish a home.'" *Saenz v. Roe*, 526 U.S. 489, 502 (1999) (quoting *Zobel*, 457 U.S. at 74 (O'Connor, J., concurring)). Moreover, as discussed below, the supposed benefits of the valuation freeze – protection from inflation and certainty

regarding the amount of taxes that will be assessed – are illusory. Because the valuation freeze does not in any way limit the millage rate that the County can impose, it does not provide certainty regarding the amount of taxation. On the contrary, the only thing that the valuation freeze guarantees is disparity – whatever the tax burden is, it will be disproportionately imposed on newcomers and renters.

B. The Freeze Violates the Right to Travel.

The right to travel prohibits "state laws that, by classifying residents according to the time they established residence, result[] in the unequal distribution of rights and benefits among otherwise qualified bona fide residents." *Soto-Lopez*, 476 U.S. at 903. "A state law implicates the right to travel when it actually deters such travel, when impending travel is its primary objective, or when it uses any classification which serves to penalize the exercise of that right." *Id.* (internal citations and quotations omitted).

This Court has invalidated, as violations of the right to travel, state laws that create permanent distinctions among residents based on the length of their residence in a state. *See Zobel*, 457 U.S. at 63-64. Here, the valuation freeze necessarily classifies Muscogee County residents differently for ad valorem tax purposes based solely on when they moved into the County. For example, as a result of the valuation freeze, Petitioners Ron and Faye Sherrill, who moved from Oklahoma to Muscogee County in 1998, pay higher taxes than do long-time County residents living in similar homes. (App. 42a.) In fact, any non-Georgia

resident who buys a home in Muscogee County will pay higher taxes than do current homeowners. By conditioning newcomers' tax burden on the amount of time they have owned a home in Muscogee County, the valuation freeze unconstitutionally infringes on the right to travel.

The Georgia Supreme Court incorrectly held that the valuation freeze does not impermissibly burden the right to travel because it does not include a cut-off date or an explicit residence requirement. *Columbus-Muscogee County Consol. Gov't* v. *CM Tax Equalization Found., Inc.*, 579 S.E.2d 200, 204 (Ga. 2003). This holding is wrong. The right to travel does more than prohibit state laws that impose explicit residency requirements. On the contrary, *Zobel* demonstrates that laws such as the valuation freeze that use length of residency, even without a provision that functions like a cut-off date, when determining the amount of a state provided benefit (or state imposed burden) violate the right to travel.

This case presents an even more invidious form of discrimination against newcomers than did *Zobel*. Whereas *Zobel* dealt with a state-provided *benefit*, the valuation freeze imposes a greater *burden* (in the form of higher taxes) on those who have moved into Muscogee County. Allowing Muscogee County to maintain such a "welcome stranger" system would profoundly burden the free movement of people between states that the Constitution was designed to protect.

C. The Freeze Is Unconstitutional Even Though It Applies to Those Who Move into Muscogee County from Elsewhere in Georgia.

Relying on the Oklahoma Supreme Court's opinion in *In re Initiative Petition No. 362 State Question 669*, 899 P.2d 1145, 1152 (Okla. 1995), the Georgia Supreme Court held that the valuation freeze is permissible because it affects all new home purchasers, regardless whether they moved into the County from out-of-state. (App. 11a-12a.) This Court, however, rejected this very same argument when it struck down an Arizona statute that conditioned counties' obligations to provide indigent hospital care to recipients having lived in the county for at least a year. *Memorial Hosp.* v. *Maricopa County*, 415 U.S. 250 (1974). In that case, the county argued that the statute was nonetheless constitutional because it penalized all newcomers to the county, regardless whether they had moved intrastate or interstate. *Id.* at 255. Recognizing that dividing citizens into different classes based on when they moved into a county undeniably discourages interstate travel, the Court stated: "Appellant Evaro has been effectively penalized for his interstate migration, although this was accomplished under the guise of a county residence requirement. What would be unconstitutional if done directly by the State can no more readily be accomplished by a county at the State's direction." *Id.* at 256. Just as in *Maricopa County*, petitioners have been penalized for their interstate travel.

This Court has likewise rejected the argument that challenges under the Privileges and Immunities Clause must fail if in-state residents are also burdened by the regulation in question. *See Camden*, 465 U.S. 208. In *Camden*, an association of labor organizations challenged a local ordinance that required at least 40% of the employees of contractors and subcontractors working on city construction projects be Camden residents. *Id.* at 210. The city argued that because the ordinance discriminated only on the basis of *municipal* residency, there could be no violation of the Privileges and Immunities Clause. *Id.* at 214. Rejecting this argument, the Court stated that "[w]e conclude that Camden's ordinance is not immune from constitutional review at the behest of out-of-state residents merely because some in-state residents are similarly disadvantaged." *Id.* at 217-18.

The same is true here. It does not matter that the valuation freeze burdens every newcomer to Muscogee County by unfairly increasing their property tax bill. The valuation freeze undeniably punishes all those who have moved to the County from outside of Georgia, and therefore violates the privileges and immunities clause and constitutional right to travel.

This Court also has held that statutes with the practical effect of imposing greater burdens on out-of-state residents violate the Privileges and Immunities Clause. *See Chalker* v. *Birmingham & Northwestern Ry. Co.*, 249 U.S. 522, 527 (1919). In *Chalker*, the Court overturned a Tennessee statute that imposed higher taxes on corporations with their principal place of business outside of Tennessee. *Id.* The tax did not,

on its face, draw any distinctions based on citizenship or residence, but its practical effect was to "produce discrimination against citizens of other states by imposing higher charges against them than citizens of Tennessee are required to pay." *Id.*

This Court has recently questioned whether *Chalker* continues to prohibit statutes that have a disparate impact on out-of-state residents. *See Hillside Dairy Inc.* v. *Lyons*, __ U.S. __, 123 S. Ct. 2142, 2147 (2003) ("Whether *Chalker* should be interpreted as merely applying the Clause to classifications that are but proxies for differential treatment against out-of-state residents, or as prohibiting any classification with the practical effect of discriminating against such residents, is a matter we need not decide at this stage of the case."). Granting the petition will give the Court an opportunity to address the question raised in *Hillside*.

IV. The Valuation Freeze Violates Basic Principles of Equal Protection as Enunciated by This Court in *Allegheny Pittsburgh Coal Co.* v. *County Commission*.

The Georgia Supreme Court erred in distinguishing this case from *Allegheny Pittsburgh Coal Co.* v. *County Commission of Webster County*, 488 U.S. 336 (1989), where this Court held that a single West Virginia county's use of acquisition value violated the Equal Protection Clause. Instead, the Georgia Supreme Court held that the valuation freeze is constitutional under the Court's opinion in *Nordlinger* v. *Hahn*, 505 U.S. 1 (1992). As is shown below, Georgia's practice of allowing a single county to adopt a tax assessment system at odds with Georgia's own requirement that

property taxes be assessed on fair market value falls squarely under the Court's prior holding in *Allegheny*. *Nordlinger* has no application to this case.

A. Allegheny is Dispositive.

In *Allegheny Pittsburgh Coal Co.* v. *County Commission of Webster County*, 488 U.S. 336 (1989), this Court held that the property tax assessment system used by Webster County, West Virginia, violated the Equal Protection Clause because Webster County applied an assessment scheme different from those of any other West Virginia County. There, the Webster County tax assessor routinely reassessed property at its current fair market value only when the property changed hands. Despite repeated protests by adversely affected owners of comparable properties, the county commission defended the resulting assessments and thus affirmed the practice as its own. Over time, this scheme "resulted in gross disparities in the assessed value of generally comparable property." *Id.*, at 338.

In unanimously striking down the Webster County scheme, this Court acknowledged that *states* have broad powers to impose taxes and may "divide different kinds of property into classes and assign to each class a different tax burden so long as those divisions and burdens are reasonable." *Id.* at 344. But the Webster County scheme drew distinctions contrary to West Virginia's "Constitution and laws [which] provide that all property of the kind held by petitioners shall be taxed at a rate uniform throughout the State according to its estimated market value." *Id.* at 345. Although the Webster Count system might be valid if "applied even-handedly to all similarly situated

property *within the State*," allowing one county to follow a radically different scheme could not meet the requirements of equal protection. *Id.* (emphasis added).

The Muscogee County valuation freeze suffers from the same constitutional infirmity that afflicted Webster County's scheme in *Allegheny*. Like the Webster County scheme, the County freezes valuations on the date of purchase and does not reassess them until the property changes hands. Like the Webster County scheme, the County's valuation freeze produces gross disparities in taxation of comparably valued properties. Respondents have never denied those disparities. Like the Webster County scheme, the Muscogee County valuation freeze fails to achieve the constitutional requirement of a "seasonable attainment of a rough equality in tax treatment of similarly situated property owners." *Id.* at 343. Finally, as in *Allegheny*, Muscogee County's scheme affects only one county of the State – placing the citizens of that county on a different constitutional footing than other state citizens, who are protected by state constitutional provisions that require that all property be taxed based on its fair market value.

B. The Georgia Supreme Court Erred in Relying on *Nordlinger* v. *Hahn*.

The Georgia Supreme Court found the County's valuation freeze to be substantially similar to the California property tax system upheld by the Court in *Nordlinger* v. *Hahn*, 505 U.S. 1 (1992). The Georgia Supreme Court ignored, however, the many differences

between California's Proposition 13 and the LCA at issue here.

First, California's system introduced a statewide constitutional provision adopting an acquisition-value based tax system applicable to all taxable properties in the state. That statewide system contained safeguards missing from the single-county-only freezes at issue here and in *Allegheny*. These safeguards, such as the limited inflation adjustment, allowed the Court to concluded that Proposition 13 would allow for the "seasonable attainment" of reasonably equitable tax rates. No such safeguards are present here – the freeze creates irrational taxation disparities between and among the citizens of Muscogee County and between the citizens of Muscogee County and the remainder of the state.[4]

Second, *Nordlinger* is distinct because California's statewide system served the state's interest in controlling inflation and providing predictability in

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[4] That the Georgia Supreme Court held that the valuation freeze – because it was enacted as a local constitutional amendment – does not violate any provisions in the Georgia Constitution does not alleviate the equal protection problem created by the fact that Muscogee County has opted-out of a tax system that uniformly taxes property based on its current market value. In *Allegheny*, the West Virginia Supreme Court specifically held that Webster County's valuation system did not violate West Virginia's laws or constitution. *In re 1975 Tax Assessments Against Oneida Coal Co.*, 360 S.E.2d 560, 564-65 (W. Va. 1987). But this holding did not prevent this Court from finding that Webster County's scheme denied its residents equal protection. The critical issue in *Allegheny* was the fact that Webster County had imposed a property valuation scheme *completely different* from that imposed everywhere else in the state. This is exactly what Muscogee County has done, and by doing so, the County has violated the equal protection clause.

the amount of taxation. Unlike the California system, which capped taxes at no more than 1% of a property's value, the County's valuation freeze does not in any way prevent the County from increasing taxes by raising the millage rate. Thus, contrary to the County's assertions otherwise, the valuation freeze neither protects current homeowners against the danger of unaffordable tax increases nor does it allow them to predict each year the amount of taxes they will owe. The only thing that the valuation freeze does ensure is that new home purchasers and renters will pay more in taxes than will long-time homeowners. The Supreme Court's approval in *Nordlinger* of a taxation system that actually furthered the state's interest in protecting against inflation does not justify a scheme that only serves to impose an ever increasing portion of the County's tax burden on newcomers and renters.

Third, in contrast to the California system, Muscogee County coupled its valuation freeze with an "inflation adjustment,"[5] thereby giving early homeowners the windfall of both a frozen valuation and an annual "rebate" because of the inflation occurring from 1983 to 1992. The inflation adjustment, enacted just *prior to* the valuation freeze, protected County homeowners from the effects of inflation and left little for a valuation freeze to accomplish in that regard, other

[5] The inflation adjustment set the standard homestead exemption at $5,000 for 1982 and then increased the standard exemption each year by an amount equal to the annual percentage increase in the County's total tax digest. *See* 1980 Ga. Laws. 2009. This inflation adjustment – which greatly outpaced the rate of actual inflation – increased the homestead exemption for someone who owned a home in 1983 from $6,237 in-1983 to $13,500 in 1992, when the inflation adjustment was capped. (App. 17a-18a.)

than shift the overall tax burden to newcomers and renters, a fact that belies the County's proffered justification for the valuation freeze. This double-dip in Muscogee County's scheme has no counterpart in the statewide California system upheld in *Nordlinger*.

The trial court properly applied the rational basis test in concluding that the valuation freeze violated the Equal Protection Clause. *Nordlinger* did not give carte blanch to all tax freezes, no matter how arbitrary, irrational, and discriminatory. The Muscogee County freeze, like the one-county aberrational scheme stricken down in *Allegheny*, produces gross inequalities in the taxation of comparable properties, with no rational justification for the discriminatory treatment. Accordingly, the Court should grant the Petition in order to correct the Georgia Supreme Court's misapplication of *Allegheny* and *Nordlinger*, and to resolve a split in state court decisions following *Nordlinger*. *See Roosevelt v. Montana Dept. of Revenue*, 975 P.2d 295 (Mont. 1999) (distinguishing *Nordlinger* and finding Montana tax freeze unconstitutional under *Allegheny*).

CONCLUSION

For the foregoing reasons the Petition for a Writ of Certiorari should be granted.

Respectfully submitted,

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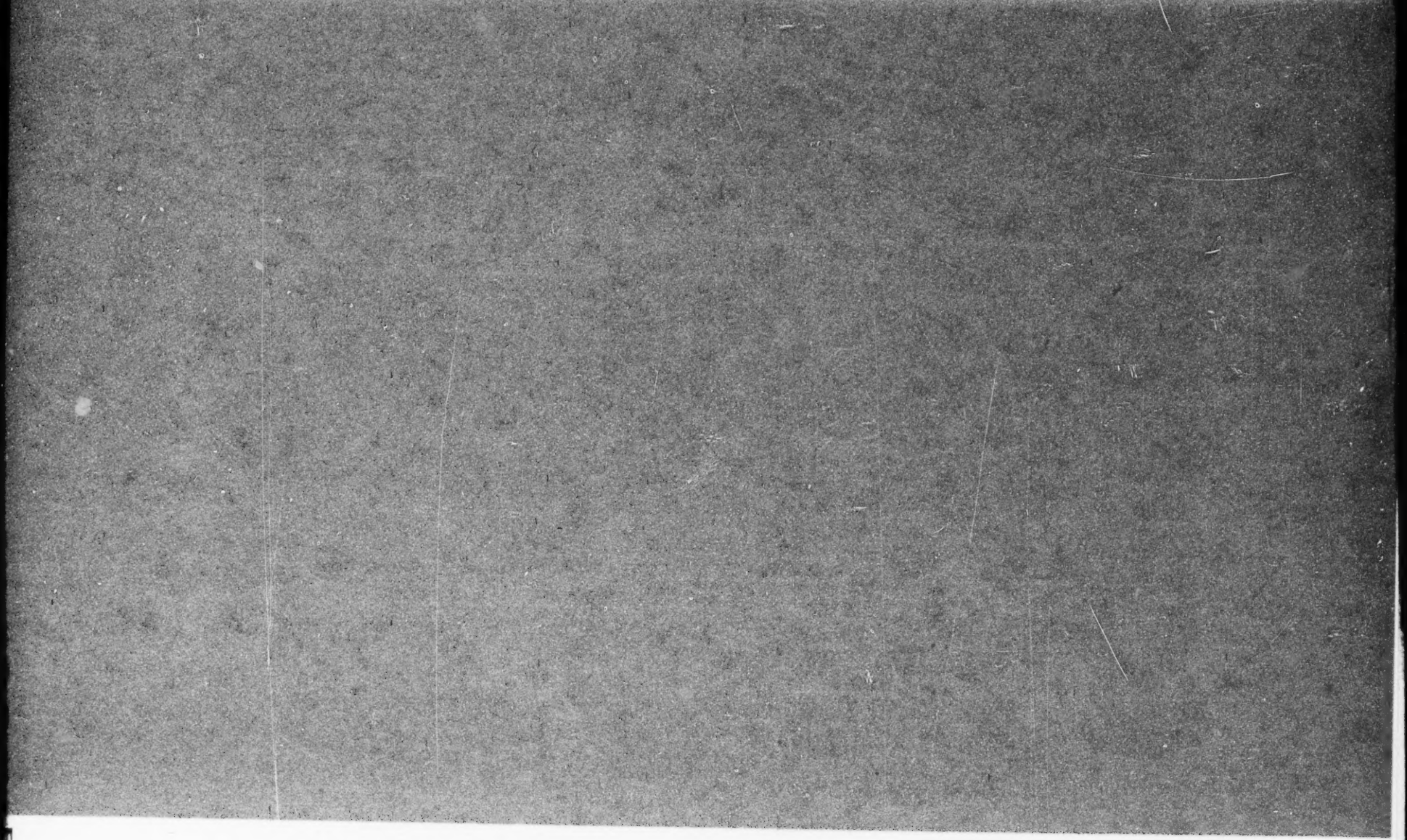
APPENDIX



APPENDIX A — ORDER OF THE GEORGIA SUPREME COURT REVERSING TRIAL COURT'S GRANT OF SUMMARY JUDGMENT TO PETITIONERS, *SUB NOM. COLUMBUS-MUSCOGEE COUNTY CONSOLIDATED GOVERNMENT ET AL. v. CM TAX EQUALIZATION, INC., ET AL.* 276 GA. 332, 579 S.E.2D 200 (MARCH 24, 2003)

IN THE SUPREME COURT OF GEORGIA

S02A1688

COLUMBUS-MUSCOGEE COUNTY CONSOLIDATED GOVERNMENT et al.

v.

CM TAX EQUALIZATION, INC. et al.

HUNSTEIN, Justice.

CM Tax Equalization, Inc. and several individual residents of Columbus-Muscogee County brought suit challenging the constitutionality of a local constitutional amendment ("LCA") that affects the manner in which homestead property in Columbus-Muscogee County Consolidated Government (the County) is valued for ad valorem taxation purposes. The trial court granted summary judgment to plaintiffs, prompting the County government defendants to file this appeal. Because we agree with the County government appellants that the LCA is not unconstitutional for the reasons set forth by the trial court, we reverse.

Appendix A

Pursuant to the provision in the 1976 Constitution that authorized LCAs, see Ga. Const. 1976, Art. XXII, Sec. I, Par. I, the General Assembly in 1981 approved the County's LCA for the purpose of amending Art. VII, Sec. I, Par. III. The LCA provided that

> homestead property in Muscogee County shall be valued for purposes of ad valorem taxation for school and city-county consolidated government purposes based upon the fair market value of the property as of January 1, 1983; or as of January 1 of the first year when homestead exemption is allowed and claimed after January 1, 1983; or as of January 1 of the year following the last change of ownership after January 1, 1983, whichever is later.

Ga. L. 1981, p. 1926-1927. The LCA also provided for reassessment to current fair market value when the property is transferred at death to someone other than a spouse. Major improvements to a home are added to the frozen value. The "frozen" value applies only to County ad valorem taxation; the property is taxed at current fair market value for State ad valorem tax purposes. A substantial majority of the voters in the County voted in favor of the "Homestead Freeze" LCA in 1982. Ga. L.1983, p. 5210.

The procedure for enacting new LCAs was not retained in the 1983 Georgia Constitution, but local governments could continue existing LCAs beyond July 1, 1987 by following the provisions set forth in Art. XI, Sec. I, Par. IV(a) of the 1983 Georgia Constitution. The County's Homestead Freeze LCA was continued in effect by the passage of a local law. Ga. L.1986, p. 3800. Pursuant to a 1991 local act

authorizing a local referendum on whether the LCA should be repealed, Ga. L.1991, p. 4255, an overwhelming majority of County voters approved the referendum that continued the Homestead Freeze LCA. Ga. L.1992, CCCLXXXVI.

1. The trial court held that the Homestead Freeze LCA is unconstitutional because it conflicts with the uniformity in taxation clause of the State constitution. Art. VII, Sec. I, Par. III, Ga. Const. of 1983. The Homestead Freeze LCA's enabling legislation expressly reflects that it was intended to amend that clause. Ga. L.1981, p.1926.[1] Although the trial court ruled that the LCA amounted to nothing more than a local law, which could not legally conflict with any earlier-enacted constitutional provision, this ruling fails to recognize that the State Constitution specifically provides that those pre-existing LCAs that were not repealed as provided in Art. XI, Sec. I, Par. IV(a) of the Constitution "shall be continued in force and effect as a part of this Constitution." Id. at (b).

This Court has recognized the continued constitutional status of those LCAs that have not been repealed as provided in Art. XI, Sec. I, Par. IV(a). See, e.g., *Copeland v. State of Georgia,* 268 Ga. 375 (490 SE2d 68) (1997). As we held in *Copeland,*

> When an amendment to the Constitution has been proposed by the General Assembly and ratified

1. Both Art. VII, Sec. I, Par. III(a) of the 1983 Georgia Constitution and Art. VII, Sec. I, Par. III of the 1976 Georgia Constitution address the uniformity of taxation and provide, in identical language, that "all taxation shall be uniform upon the same class of subjects within the territorial limits of the authority levying the tax."

> by the voters, the amendment will not be declared void on the ground that it does not accord with some other provision of the same Constitution. If an amendment, duly adopted, is in conflict with some previous provision, the amendment, being the last expression of the sovereign will of the people, will prevail as an implied modification pro tanto of the former provision. [Cits.] This means that an amendment will not be ineffectual or invalid merely because it conflicts with existing provisions. [Cits.]

Id. at 379-380(4). Hence, in *Copeland* we upheld an LCA authorizing the issuance of certain revenue bonds over the claim that the LCA was in conflict with Art. IX, Sec. V, Par. I (the debt limitations clause), Art. IX, Sec. VI, Par. I (the general revenue bond provisions specifying that revenue bonds are repayable only from project revenues), and the gratuities clause, Art. IX, Sec. II, Par. VIII of the 1983 Ga. Const.

Applying our rationale in *Copeland* to the instant case, we conclude that because the Homestead Freeze LCA in issue here was a subsequent amendment to the uniformity clause, Art. VII, Sec. I, Par. III, and because the LCA continues in force and effect as part of our State Constitution, Art. XI, Sec. I, Par. IV(b), the County's Homestead Freeze LCA is valid despite any conflict with the uniformity clause.[2] See *Copeland*, supra.

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2. This rationale also controls the trial court's ruling that the Homestead Freeze LCA unconstitutionally conflicts with Art. VIII, Sec. I, Par. VI(a), although in this regard we note that school tax is

(Cont'd)

Compare *Bradfield v. Wells,* 262 Ga. 198 (415 SE2d 638) (1992) (LCA affecting election terms of county officials did not encompass county school superintendent so LCA did not conflict with school superintendent election provision in Constitution).

2. The trial court held that the Homestead Freeze LCA violated the equal protection clauses of the State and Federal Constitutions.

(a) When a classification does not impact a fundamental right or operate to the disadvantage of a suspect class, the disparate treatment caused by the classification must meet only the rational relationship test. *Grissom v. Gleason,* 262 Ga. 374(3) (418 SE2d 27) (1992). Under that test, classifications are "permitted when the classification is based on rational distinctions and bears a direct relationship to the purpose of the legislation. [Cit.]" Id. at 377(3).

> In general, the Equal Protection Clause is satisfied so long as there is a plausible policy reason for the classification, [cit.], the legislative facts on which the classification is apparently based rationally may have been considered to be true by the governmental decisionmaker, [cit.], and the

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(Cont'd)
required to be levied only "upon the assessed value of all taxable property within the territory served by said school system," id., and we have defined "assessed value" to mean "the correctly assessed value (i.e., the assessed value approved by the revenue commissioner), not an incorrectly assessed value." *Bd. of Comrs. of Newton County v. Allgood,* 234 Ga. 9, 17 (7) (214 SE2d 522) (1975).

> relationship of the classification to its goal is not so attenuated as to render the distinction arbitrary or irrational. [Cit.] This standard is especially deferential in the context of classifications made by complex tax laws. "[I]n structuring internal taxation schemes 'the States have large leeway in making classifications and drawing lines which in their judgment produce reasonable systems of taxation.'" [Cits.]

Nordlinger v. Hahn, 505 U.S. 1, 11-12 (112 SC 2326, 120 LE2d 1) (1992). In *Nordlinger,* the United States Supreme Court upheld California's acquisition-value based property tax system (known as Proposition 13) against an equal protection challenge, finding that the policies underlying the system promoted the rational, legitimate governmental purposes recognized by the Court, i.e., the encouragement of neighborhood preservation, continuity and stability, id. at 12, and the protection of the reliance interests of existing homeowners. Id. at 12-13. Because Proposition 13 was not "palpably arbitrary," id. at 18, the *Nordlinger* Court concluded that the California tax scheme was not unconstitutional.

The record in this case establishes that the very same policies identified in *Nordlinger* underlie the acquisition-value taxation scheme authorized by the Homestead Freeze LCA. Moreover, by explicitly amending the uniformity in taxation clause, see Ga. L.1981, p.1926, the LCA adopted a taxation scheme different from that specified by Art. VII, Sec. I, Par. III and general revenue statutes. Compare *Allegheny Pittsburgh Coal Co. v. County Com'n of Webster*

County, 488 U.S. 336, 343 (109 SC 633, 102 LE2d 688) (1989). Nevertheless, the trial court rejected the holding in *Nordlinger* and concluded that the taxation scheme in issue here was unconstitutional for the reasons set forth in *Allegheny Pittsburgh,* supra. The *Nordlinger* Court, however, distinguished *Allegheny Pittsburgh* on the basis that no evidence indicated the Webster County's taxation scheme was founded upon the rational government purposes recognized by the Court in *Nordlinger* or that Webster County intended to adopt a taxation scheme that varied in practice from the uniformity standards set forth in West Virginia's constitution and statutes.[3] "*Allegheny Pittsburgh* was the rare case where the facts precluded any plausible inference that the reason for the unequal assessment practice was to achieve the benefits of an acquisition-value tax scheme." (Footnote omitted.) Id. at 16.

We find the Homestead Freeze LCA distinguishable from *Allegheny Pittsburgh* on the same grounds explicated by the U.S. Supreme Court in *Nordlinger.* As was the case with Proposition 13, the Homestead Freeze LCA "was enacted precisely to achieve the benefits of an acquisition-value system." Id., 505 U.S. at 16. Although appellees and the trial court point to several factual differences between California's Proposition 13 tax system and the homestead freeze system

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3. The *Nordlinger* Court found significant the fact that in *Allegheny Pittsburgh* the purpose for the Webster County taxation scheme was to assess properties at their "true current value" and that there was "'no suggestion' that 'the State may have adopted a different system in practice from that specified by statute,' [cit.]" id. at 15, given that West Virginia's constitution and statutes required a uniform tax rate throughout the State.

implemented by the LCA[4] as grounds to distinguish *Nordlinger,* we find none of those differences to be critical to the application of the U.S. Supreme Court's rationale in *Nordlinger* to the instant case. We thus conclude that the Homestead Freeze LCA is not unconstitutional under a rational relationship equal protection analysis because of the classifications it draws among homeowners based upon purchase-date classification or because of the separate classification of homeowners and renters.[5]

(b) The trial court, while properly applying the rational relationship test, also "look[ed] at who is most harmed by the system" in weighing whether the Homestead Freeze LCA was violative of equal protection and listed among the persons disadvantaged by operation of the LCA "young people, people in transition,[6] the working poor, and, perhaps,

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4. Appellees point to, inter alia, the fact that Proposition 13 applies throughout all of California to all properties, both residential and commercial, and that it does not completely freeze valuation but places an annual two percent inflationary cap. The only distinction discussed by the trial court was that the County allows a homestead exemption, which it increased from $6,237 in 1983 to $13,500 in 1992.

5. The trial court pointed to renters in its conclusion that the LCA is unconstitutional on the basis that lessees arguably had to pay higher rents when lessors, as owners of commercial property not included in the homestead freeze, passed along the increased tax burden.

6. For discussion of the Homestead Freeze LCA's effect upon a constitutional right to travel, see Division 4, infra.

racial minorities."[7] As to racial minorities, the trial court found only that they were "probable victims" of the County's taxation scheme, looking to statistics reflecting that racial minorities in the County tend to be in the lower income brackets. However, it is uncontroverted that the Homestead Freeze LCA applies to all homeowners regardless of income. As appellees concede in their brief, the LCA is based "solely on acquisition date and gives no consideration to income or ability to pay." The record thus establishes that all homeowners benefit from the LCA's inflation control measure, including those homeowners in racial minorities in lower income brackets who are shielded by the LCA from the adverse side effects of gentrification in their neighborhoods. See *Nordlinger,* supra, 505 U.S. at 12 (recognizing the legitimate State purpose of structuring a tax system "to inhibit displacement

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7. Although the trial court's language would seem to implicate the heightened equal protection test of strict scrutiny for classifications involving suspect classes, see generally *Barnett v. State,* 270 Ga. 472 (510 SE2d 527) (1999), we do not find strict scrutiny appropriate in this case. A facially neutral law, such as the LCA here, warrants strict scrutiny "only if it can be proved that the law was 'motivated by a racial purpose or object,'" [cit.], or if it is "'unexplainable on grounds other than race.'" [Cit.] *Hunt v. Cromartie,* 526 U.S. 541, 546 (119 SC 1545, 143 LE2d 731) (1999). The trial court here made no explicit finding that the Homestead Freeze LCA has a disparate impact on racial minorities that could ultimately be traced to a racially discriminatory purpose. See *Washington v. Davis,* 426 U.S. 229, 240 (96 SC 2040, 48 LE2d 597) (1976). Our review of the totality of the relevant facts adduced in the record fails to reveal that the Homestead Freeze LCA was enacted "at least in part 'because of,' not merely 'in spite of,' its adverse effects" upon an identifiable suspect group. See *Personnel Administrator of Massachusetts v. Feeney,* 442 U.S. 256, 279 (99 SC 2282, 60 LE2d 870) (1979).

of lower income families by the forces of gentrification"). We disagree with the trial court's ruling that the Homestead Freeze LCA violates equal protection because "racial minorities have had less success than their white economic counterparts in obtaining the financing necessary to purchase homes," given the absence of any evidence in the record that the LCA adversely affects either the fair market value of homes offered for sale within the County or the ability of racial minorities to obtain financing for the purchase of those homes.

As to the adverse affect on young people and the working poor, the *Nordlinger* Court rejected the argument that the California taxation scheme was unconstitutional because of its adverse impact upon many "younger and poorer California families." Id. at 17(III). While potential homeowners may be discouraged from purchasing homes by the prospect of paying taxes assessed to current values (at least as of the year of purchase), this does not render the Homestead Freeze LCA unconstitutional. As the U.S. Supreme Court stated:

> the State legitimately can conclude that a new owner at the time of acquiring his property does not have the same reliance interest warranting protection against higher taxes as does an existing owner. The State may deny a new owner at the point of purchase the right to "lock in" to the same assessed value as is enjoyed by an existing owner of comparable property, because an existing owner rationally may be thought to have vested expectations in his . . . home that are more deserving of protection that the anticipatory expectations of a new owner at the point of purchase.

> A new owner has full information about the scope of future tax liability before acquiring the property, and if he thinks the future tax burden is too demanding, he can decide not to complete the purchase at all. By contrast, the existing owner, already saddled with his purchase, does not have the option of deciding not to buy his home if taxes become prohibitively high . . . In short, the State may decide that it is worse to have owned and lost, than never to have owned at all.

Id. at 12-13.

The Homestead Freeze LCA did not violate the equal protection clauses of the State and Federal Constitutions for the reasons set forth by the trial court.

3. Under the applicable rational basis test, see generally *State of Georgia v. Old South Amusements, Inc.*, 275 Ga. 274, 277-278 (564 SE2d 710) (2002), we likewise conclude that the Homestead Freeze LCA does not violate the due process clauses of the State and Federal Constitutions.

4. Finally, because there is no cut-off date or durational residence requirement in the LCA, we find distinguishable the cases relied upon by the trial court when it held that the Homestead Freeze LCA violates the right to travel guaranteed by the Federal constitution. See *Hooper v. Bernalillo County Assessor,* 472 U.S. 612 (105 SC 2862, 86 LE2d 487) (1985) (preferential tax treatment accorded veterans residing in state prior to set date but not to those veterans who moved into state after that date); *Memorial Hospital v. Maricopa County,* 415

U.S. 250 (94 SC 1076, 39 SE2d 306) (1974) (one year residency requirement for receipt of indigent health benefits). Nothing in the Homestead Freeze LCA treats new arrivals to the County any differently from long-term County residents seeking to purchase a home there. See *Zobel v. Williams,* 457 U.S. 55, 60 n. 6 (102 SC 2309, 72 LE2d 672) (1982) (right to travel analysis refers to little more than a particular application of equal protection analysis). We agree with appellants that the trial court's reasoning is flawed and that the Homestead Freeze LCA is not unconstitutional on this basis. See *In Re Initiative Petition No. 362 Question 699,* 899 P.2d 1145, 1152 (II) (B) (Okla.1995).

Judgment reversed. All the Justices concur, except Benham, J., who dissents.

APPENDIX B — ORDER OF THE SUPERIOR COURT OF MUSCOGEE COUNTY GRANTING PETITIONERS' MOTION FOR SUMMARY JUDGMENT DATED JUNE 24, 2002

IN THE SUPERIOR COURT OF MUSCOGEE COUNTY STATE OF GEORGIA

Civil Action No: SU-2000-CV-3256

CM TAX EQUALIZATION FOUNDATION, INC.; HULETTE BOOTH; WILLIAM FEIGHNER; TERRELL GREEN; BETTIE RUTH HAYNES; MOSES HAYNES; KENNETH HENSON, JR.; EARLE F. LASSETER; SALLY BORK LASSETER; LISA D. MCNARRY; FAYE SHERRILL; RON SHERRILL; TED SHORT; PENNY SHORT; CARL J. THOMAS; CONNIE GRAY THOMAS; ERNESTINE WELLS; RICHARD WELLS; WILL WHITE; AMY WHITE; CHRISTOPHER WIGHTMAN; and ASTRID WIGHTMAN;

Plaintiffs,

v.

COLUMBUS-MUSCOGEE COUNTY CONSOLIDATED GOVERNMENT; MUSCOGEE COUNTY BOARD OF TAX ASSESSORS; LULA LUNSFORD HUFF, in her official capacity as Tax Commissioner, Muscogee County; and MUSCOGEE COUNTY BOARD OF EQUALIZATION;

Defendants.

Appendix B

ORDER OF THE COURT

Plaintiffs challenged a local constitutional amendment (hereinafter "LCA") in Columbus-Muscogee County under both the Georgia and United States Constitutions. The LCA "freezes" the valuation of homestead property for ad valorem tax purposes at its fair market value on the latter of January 1, 1983, or, with limited exceptions, the date of sale (the "Tax Freeze"). The critical facts have been stipulated by the parties and the matter is before the Court for decision on cross motions for summary judgment.

This Court heard oral arguments on the parties' cross-motions for summary judgment on March 14, 2002. Having reviewed the parties' motions and supporting briefs and considered the parties' oral arguments, the Court now makes the following findings of fact and conclusions of law.

FINDINGS OF FACT

Virtually all of the facts relevant to the issues raised in this case have been stipulated by the parties. The Court hereby incorporates by reference thereto the Stipulations and Supplemental Stipulations submitted by the parties into this Judgment and Order. Given the comprehensiveness of these stipulations, the Court here describes the facts only in brief, including as necessary, findings of fact not stipulated by the parties but which the Court finds to be uncontroverted.

Plaintiffs in this action are the CM Tax Equalization Foundation, a private, nonprofit corporation established by Muscogee Citizens concerned about the disparities in the imposition of ad valorem taxes in Muscogee County,

and several residents of Muscogee County (collectively "Citizens"). Some of the resident plaintiffs are homeowners directly subject to the County's ad valorem taxes, while others are renters. Defendants are the Columbus-Muscogee County Consolidated Government; the Muscogee County Board of Tax Assessors, the County Tax Commissioner, and the Muscogee County Board of Equalization (collectively "Muscogee County").

In 1980, the Columbus City Council passed a resolution endorsing the creation of a homestead freeze. The Council cited the need to protect the citizens of the County from increasing property assessments caused by rampant inflation. Inflation throughout the South could fairly be described as rampant at that time. The Bureau of Labor Statistics reports that inflation in the South Urban region reached 11.4% in 1979, 13.1% in 1980, and 10.7% in 1981.

In 1983, Muscogee County, unlike any of the other 158 counties in Georgia, froze the valuation of homestead property for ad valorem tax purposes at fair market value for the later of one of three dates: (1) January 1, 1983, (2) January 1 of the first year in which the homestead exemption is claimed and allowed, or (3) January 1 of the year following the last change of ownership. Under the tax freeze, the frozen value remains the assessed value until the property is sold or transferred at death to someone other than a spouse. Only then, when in the possession of the new homeowner, will the property be revalued at the then-current fair market value. The freeze applies only to homestead property; it does not apply to rental residential facilities or commercial property.

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The tax freeze produces widely varying tax assessments for homes of comparable fair market value. The parties have stipulated to numerous examples of the magnitude of the disparity. For instance, approximately 1773 homesteads in the County had a fair market value for ad valorem tax purposes in the year 2000 of $75,000 (plus or minus 2.5%). Due to the tax freeze and the County's Standard Homestead Exemption, 27 of these homeowners owed no County ad valorem tax at all; more than 110 other homes owed $110 or less; while approximately 840 homes of an approximate value of $75,000 were taxed on the basis of their current fair market value and had a County ad valorem tax bill averaging $660, 5 times the amount being paid by hundreds of other *citizens* owning homes of equivalent value and more than 600 times the amount assessed to the earliest homeowners. The disparity in some cases is as high as 4000%. In one instance the owner of a home with a present day market value of $104,857 is assessed only $20.60 in ad valorem taxes, while a neighbor owning a home only a block away with a present day value of $101,480 receives a tax bill of $837.36.

Muscogee County's tax freeze was enacted at the request of the County's delegation by a single house of the legislature as an LCA, subject to approval by the citizens of the County in a public referendum. *See* 1981 Ga. Laws 1926. Muscogee County voters gave that approval in the same general election in which the people of the state adopted a new constitution that terminated any further use of LCAs and that provided for a limited carried over status for existing LCAs. *See* 1983 Ga. Laws 5210. Under the provisions of the 1983 Georgia Constitution, if the County had taken no action prior to July, 1 1987, the LCA would have died. Ga. Const. Art. XI, § 1,

para. iv(a). The General Assembly and Muscogee County's voters, however, approved a local law that saved the tax freeze LCA from automatic extinction. *See* 1986 Ga. Laws 3800.

LCA's are distinct from other provisions of the Constitution. They apply only within a specific geographic subdivision. More importantly, unlike other constitutional provisions, which can be repealed only by a favorable vote of two-thirds of each house of the General Assembly and approval by a majority of the state's voters, Ga. Const. Art. X., an LCA can be repealed much more readily. Only a local act of the General Assembly approved by a majority of the County's voters is required. Ga. Const. Art. XI, § 1, para. iv(b).

Another LCA passed by Muscogee County also impacts the assessment of ad valorem taxes in the County. In 1980 Muscogee County approved an LCA fixing the County's Standard Homestead Exemption at $5,000 for 1982 and adjusting the exemptions for all subsequent years by the percentage by which the taxable properties in the County tax digest of the prior year increased or decreased from the year prior to that. *See* 1980 Ga. Laws 2009. This "inflation adjustment" increased the Standard Homestead Exemption for a 1983 homeowner from $6,237 in 1983 to $13,500 for 1992, or a total increase of $7,263.

Because the inflation adjustment used the increase in the total tax digest as the measure of inflation, the rate of increase in the exemption far outstripped the actual impact of inflation. For example, while the rate of inflation in the

County as measured by the Consumer Price Index totaled only 35.4% in the 10-year period from 1983 through 1992, the total "inflation adjustment" in the Standard Homestead Exemption for that same period reached 216% ($13,500 ÷ $,7,263).

Both the tax freeze and the "inflation adjustment" were peculiar to Muscogee County alone and were reauthorized at the same time under the expiring local constitutional amendment process. *See* 1986 Ga. Law 3800; 1986 Ga. Law 3798. Also, in 1991, the tax freeze was again approved by local referendum and, at the same time, the "inflation adjustment" was capped at $13,500 by local legislation. *See* 1991 Ga. Law 4265.

The combination of the tax freeze and the inflation adjustment provides remarkable tax relief to 1983 homeowners. Although the tax freeze protected them from any inflation-related increase in their taxable values, the inflation adjustment increased their homestead exemption each year by an amount far in excess of the prevailing inflation rate. The greater the inflation from 1983 to 1992, the higher their homestead exemptions and the lower their property taxes.

CONCLUSIONS OF LAW

A. Overview

The Court finds that the tax freeze abridges fundamental rights protected by both the Georgia and the United States Constitutions. The tax freeze has resulted in gross disparities in the assessed value of essentially comparable properties.

Such a disparity can be constitutionally justified only if it is the result of a difference in classification that rationally and reasonably furthers a legitimate state interest. *Nordlinger v. Hahn*, 505 U.S. 1, 11 (1992). While the U.S. Supreme Court has granted leeway to state actors to craft their own means of taxation, the Court still insist on rigid ends mandating that "in each case, the Constitution requirement is the seasonable attainment of a rough equality in tax treatment of similarly situated property owners. *Allegheny Pittsburgh Coal Co. v. County Comm'n*, 488 U.S. 336 (1989). The present tax scheme in Muscogee County with its highly disparate tax treatment of similarly situated property owners does not pass constitutional muster. The Court further finds that the homestead exemptions in Muscogee County protects homeowners from inflation and creates stability in neighborhoods, thus accomplishing the alleged goals of the tax freeze and leaving no rational basis for it. Muscogee's tax freeze, therefore, violates the Equal Protection and Due Process Clauses of the United States Constitution.

The Court further finds that the freeze violates the Uniformity, Equal Protection, and Due Process clauses of the Georgia Constitution. Though nominally an LCA, the freeze, which can be repealed by a bare majority of the citizens of Muscogee County, cannot abridge fundamental rights secured by the Georgia Constitution.

The Court further finds that the freeze discriminates against persons who move into the County from other states in violation of the right to travel protected by the United States Constitution.

Appendix B

B. Standing

Before addressing the various constitutional violations asserted by the Citizens, the Court first addresses Muscogee County's arguments regarding standing. Under Georgia law, "the only prerequisite to attacking the constitutionality of a statute 'is a showing that it is hurtful to the attacker.'" *Bo Fancy Prods. v. Rabun County Bd. Of Comm'rs*, 267 Ga. 341, 344, 478 S.E.2d 373 (1996) (citations omitted). The individual Plaintiffs here represent a cross-section of those burdened by the tax freeze, including homeowners and renters. Each individual Plaintiff has been forced to bear a disproportionate share of the County's tax burden, and the homeowner Plaintiffs have been compelled to pay property taxes in excess of those assessed on owners of equivalent property without regard to their ability to pay. These injuries give Plaintiffs standing to challenge Muscogee County's tax freeze by asserting their rights under both the United States and Georgia Constitutions.

Muscogee County argues that the Plaintiffs who rent property in Muscogee County do not have standing to challenge the tax freeze because they are not assessed taxes by the County. However, renters are undeniably injured by the freeze. The unchallenged affidavits of John Flattery and Will White, attached as exhibits to Plaintiffs' summary judgment motion, as well as basic economics, however, demonstrate that the resulting tax increase is passed on to renters through increased rents. *See Baker v. Matheson*, 607 P.2d 233, 243 (Utah 1979) (noting that "property taxes are generally passed on by landlords to their renters in the form of increased rents"). Because the Plaintiffs who rent property in Muscogee County have been

injured by the County's tax scheme, they have standing to challenge the constitutionality of the County's policies.

Muscogee County contends that this action should be dismissed because several of the homeowners failed to exhaust required administrative remedies. Georgia law is clear that the courts will not require a plaintiff to exhaust a futile administrative remedy. In this case, it is clear that any appeal of the tax assessments through an administrative process would have been futile given the inability of the Board of Tax Assessors or the Board of Equalization to address the homeowners' constitutional concerns.

Finally, Muscogee County contends that Plaintiffs lack standing to challenge the tax freeze on the ground that it violates the constitutionally protected right to travel because all of the Plaintiffs have chosen to live in the County despite the tax freeze. The Court disagrees. At least two of the Plaintiffs, Ron and Faye Sherrill, moved to Muscogee County from another state and have standing to assert a right to travel claim because they pay higher taxes based on when they moved to Muscogee County from another state. It is of no consequence that the Sherrills chose to move to Muscogee County in the face of the County's discriminatory tax scheme. Many of the Supreme Court cases discussing the right to travel were brought by plaintiffs who had already completed interstate travel despite the burden imposed by the challenged statute. *See, e.g., Saenz v. Roe*, 526 U.S. 489 (1999); *Memorial Hospital v. Maricopa County*, 415 U.S. 250 (1974); *Dunn v. Blumstein*, 405 U.S. 330 (1972); *Shapiro v. Thompson*, 394 U.S. 618 (1969).

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C. Equal Protection

Muscogee County's tax freeze violates the Equal Protection Clause of the United States Constitution. The "appropriate standards of review are whether the difference in treatment" caused by the freeze "rationally furthers a legitimate state interest." *Nordlinger v. Hahn*, 505 U.S. 1, 11 (1992), and whether there has been a seasonable attainment of tax treatment of similarly situated property owners, *Allegheny Pittsburgh Coal Co. v. County Comm'n*, 488 U.S. 336 (1989). In *Nordlinger*, the Supreme Court held that an acquisition-value based property tax system is constitutional provided there is a rational basis for it. As in *Nordlinger*, the property tax system at issue in the present case is an acquisition-value based system. In a strikingly similar case, *Allegheny Pittsburgh Coal Co. v. County Comm'n*, 488 U.S. 336 (1989), that is difficult for this Court to reconcile with *Nordlinger*, the Supreme Court invalidated a State taxing scheme on equal protection grounds.[1] In *Allegheny*, the Court ruled that the practice of assessing coal mining property according to acquisition cost violated the equal protection rights of those taxpayers who were recent purchases of coal property as a result of the vast tax disparities of like property in Webster County.

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1. Samuel A. Mandarino – Nordlinger to Allegheny: This Town Ain't Big Enough for the Both. 1993 Wis. L. Rev. 1195.

Michael D. Rawlins – *Nordlinger v. Hahn* and *Allegheny Pittsburgh Coal Co. v. County Commissioners*, 1993 Brigham Young University L. Rev.

John A. Miller – Rationalizing Injustice: The Supreme Court and the Property Tax. 1993 Hofstra Law Review Association.

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The Defendants in this case must show that the difference in treatment of new homeowners versus old homeowners rationally furthers a legitimate state interest. To be rational, the classification must forward a public good that outweighs the harm it may cause to those who are disadvantaged by the classification. Defendants in the present case use the same rationale for the tax freeze as the Defendants in *Nordlinger*: protection of homeowners against rising inflation rates and local neighborhood preservation, continuity, and stability. The Supreme Court in *Nordlinger* held that this rationale satisfied the requirement that the law rationally further a legitimate state interest.

Nevertheless, the Court also looks at who is most harmed by the system. In reversing the West Virginia Supreme Court, the Court ruled that "the fairness of one's allocable share of the total property tax burden can only be meaningfully evaluated by comparison with the share of others similarly situated relative to their property holdings." In the present case, unlike in California's Proposition 13, Muscogee County supplements the tax freeze with a homestead exemption. In 1980 Muscogee County approved an LCA fixing the County's Standard Homestead Exemption at $5,000 for 1982 and adjusting the exemptions for all subsequent years by the percentage by which the taxable properties in the County tax digest of the prior year increased or decreased from the year prior to that. *See* 1980 Ga. Laws 2009. This "inflation adjustment" increased the Standard Homestead Exemption for a 1983 homeowner from $6,237 in 1983 to $13,500 for 1992, or a total increase of $7,263.

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The combination of the tax freeze and the inflation adjustment provides remarkable tax relief to 1983 homeowners. Although the tax freeze protected them from any inflation-related increase in their taxable values, the inflation adjustment increased their homestead exemption each year by an amount far in excess of the prevailing inflation rate. The greater the inflation from 1983 to 1992, the higher their homestead exemptions and the lower their property taxes.

Measured against the yard stick of Proposition 13, the Muscogee tax freeze does not rationally further a legitimate state interest. As an inflation control measure it is far too extreme and too suspect to survive constitutional review, especially when evaluated in light of the inflation adjustment measure already in place. The justification that it protects the elderly and protects those of lower income also fails to survive rational basis review. Based upon published Census data, plaintiffs have demonstrated that the county renters on the whole are financially less affluent than homeowners and include a proportionately large number of minorities. Yet renters are excluded from the tax relief afforded by the freeze. Stated another way, those who are hurt by this scheme are those persons who do not currently own homes (but who hope to) are those most harmed by such a system. Included in this group are young people, people in transition, the working poor, and, perhaps, racial minorities. The Court includes racial minorities as probable victims because historically people of color have had less success than their white economic counterparts in obtaining the financing necessary to purchase homes. This exclusion makes the freeze an irrational device for benefiting the citizens disproportionately found in the excluded class. In his dissent in *Nordlinger*

Justice Stevens stated "Similarly situated neighbors have an equal right to share in the benefits of local government. It would obviously be unconstitutional to provide one with more or better fire or police protection than the other; it is just as plainly unconstitutional to require one to pay five times as much in property taxes as the other for the same government services."

The rational basis test, while somewhat of a lenient standard, requiring only that the classification scheme must be reasonable, remains dependent upon context and human judgment, and ultimately calls on the Court to be fair and do what is right.

As supplemented by the homestead exemption, the tax freeze does not rationally and reasonably further a legitimate state interest. It therefore violates the Equal Protection Clause of the United States Constitution.

D. Violation of the Georgia Constitution

Muscogee's tax freeze also violates numerous provisions of the Georgia Constitution, including the uniformity clauses and the equal protection clause.

Muscogee County asserts that because its freeze was enacted as a local constitutional amendment, it cannot be held to violate any provision of the Georgia Constitution. The Court holds that under the Constitution as presently configured, the violation of fundamental provisions of the Georgia Constitution by a local constitutional amendment cannot be countenanced.

Certainly, a local constitutional amendment could not withstand constitutional attack if it was enacted to promote

segregation anymore than the subject LCA that results in vast tax disparities of like property in Muscogee County. While this Court in no way attempts to address the constitutionality of the State's other existing LCA's, it is worth noting that the 1983 Georgia Constitution effectively diminished the status of LCA's relative to the Constitution's more fundamental provisions. The 1983 Constitution provides that an LCA carried-over after 1987 can be repealed by a local bill of the General Assembly conditioned on approval by a majority vote in the affected governmental district.

The Muscogee tax freeze could be repealed by the mere passage of a local bill by majority vote of the legislature ratified by only 50% of the voters in Muscogee County alone. Ga. Const. Art. XI, § 1, para. iv(b). In contrast, the Uniformity, Equal Protection clause, and School Funding Clauses of the Georgia Constitution could be repealed only by a favorable vote of two-thirds of each house of the General Assembly and approval by a majority of the state's voters. Ga. Const. Art. X. This distinction in how they can be repealed, reveals something essential about the character of each. Indeed, the power to destroy is often the best indicator of character. *Cf. Bowsher v. Synar*, 478 U.S. 714, 727-28 (1989) (holding that Comptroller General was not an executive officer because he could be removed by a simple act of Congress rather than by impeachment).

However appealingly named, it is clear to this Court that a provision of the Constitution that can be repealed by a mere majority of the inhabitants of a single county cannot be held to set aside fundamental rights guaranteed by other provisions of that same Constitution. That the Muscogee tax freeze is embodied

in a local "constitutional" amendment does not save it from being held to violate the Uniformity, Equal Protection, and School Funding Clauses of the Georgia Constitution.

The Georgia Constitution requires that "all taxation shall be uniform upon the same class of subjects within the territorial limits of the authority levying the tax." Ga. Const. art, VII, § 1, ¶ 3(a). Under this uniformity clause, all real and personal tangible property (with certain exceptions not applicable here) constitutes a single class of property and must be assessed and taxed alike. *Benson Corwin, Inc. v. Cobb County Sch. Dist.*, 239 Ga. 199, 236 S.E.2d 361 (1977). When comparable properties are assessed, and thereby taxed, at different amounts, the uniformity clause is violated. *Benson Corwin*, 239 Ga. at 200, 236 S.E.2d at 362; *Colvard*, 218 Ga. at 490, 128 S.E.2d at 732; *Suttles*, 193 Ga. at 128, 17 S.E.2d at 734.

The Georgia Constitution also requires that county school taxes must be levied upon the full assessed value of all taxable property within the school district. Ga. Const. art. VII, § 6, ¶ 1(a). Because of the tax freeze, the County is utterly failing to levy the county school tax upon the full assessed value of all "taxable property" within the district. Instead, the County levies the school tax on the arbitrarily low "frozen" value of homestead property, in violation of the Georgia Constitution. The Supreme Court has squarely held that to freeze a property's assessed value at an amount below fair market value would violate Ga. Const. art. VIII, § 6, ¶ 1(a). *Benson Corwin*, 239 Ga. at 200-01, 236 S.E.2d at 362-63.

E. Right to Travel

The tax freeze violates the right to travel guaranteed by the United States Constitution. In *Nordlinger*, the Supreme Court declined to address the issue of whether an acquisition-value based tax system violates the right to travel because the petitioner in *Nordlinger* had been a resident of the state of California prior to purchasing a home, thus the Court held the petitioner's right to travel could not have been violated. In the present case, however, at least two of the petitioners moved into Muscogee County from outside the state of Georgia.

In *Hopper v. Bernalillo County Assessor*, 472 U.S. 612, 618 n.6 (1985) (citation omitted), the Supreme Court held that the right to travel, "when applied to residency requirements, protects new residents of a State from being disadvantaged because of their recent migration or from otherwise being treated differently from longer term residents." *See, e.g., Memorial Hosp. v. Maricopa County*, 415 U.S. 250, 261 (1974); *Shapiro v. Thompson*, 394 U.S. 618 (1969), *overruled in part on other grounds by, Edelman v. Jordan*, 415 U.S. 651 (1974).[2] For homeowners who moved to the County after the frozen valuation period, their tax burden unconstitutionally is pre-determined to be more costly

2. An earlier case, *Zobel v. Williams*, 457 U.S. 55 (1982) invoked the Equal Protection Clause to invalidate an Alaska statute that distributed a portion of the state's mineral income to each of the state's residents in proportion to the number of years that resident had lived in the state. [*Id.* at 59]. There was a "fixed, permanent distinctions between an ever-increasing number of perpetual classes of concededly bona fide residents, based on how long they have been in the State." [*Id.* at 59].

than those who resided in the County earlier. The tax freeze, by applying only to those in residence during a limited period, is unconstitutionally restricted to a select group of homeowners.

It seems clear that newcomers to acquisition-value states labor under a continuous disability with respect to property ownership. As long as land prices are generally rising, which they are in Georgia and particularly Muscogee County, newcomers will be unable to acquire the benefits of real property ownership without incurring taxes at a higher effective rate than previous buyers. That disability places newcomers in a second-class status compared to the earlier arrivals who will generally constitute the majority of the taxpayers. The deprivation is permanent, and in a period of continually rising land prices the degree of deprivation increases for each new wave of immigrants. Thus, the disability is not temporary, and strict scrutiny may be triggered even if property ownership is not considered one of life's necessities. To permit a person to migrate and settle in a new area, but to use state tax laws to disable that person from purchasing real estate on the terms enjoyed by previous buyers, is to relegate that citizen to second-class status.[3]

Muscogee County contends that the constitutional right to travel is not infringed because the tax freeze affects all those who move to Muscogee County after the January 1, 1983, regardless whether they moved from out of state, citing *In re Initiative Petition No. 362 Question 699*, 899 P.2d 1145 (Okla. 1995). The Supreme Court, however, rejected the very

3. Mary Lafrance – Constitutional Implications of Acquisition – Value Real Property Taxation: Assessing the Burdens on Travel and Commerce. 1994 Utah L. Rev. Society.

same argument in *Memorial Hospital v. Maricopa County*, 415 U.S. 250 (1974). There the challenged Arizona statute conditioned counties' obligation to provide indigent hospital care on the recipient's having lived in the county for at least a year. 415 U.S. at 252. The county argued that the statute was nonetheless constitutional because it penalized anyone who had lived in the county for less than a year, regardless whether the effected person had moved intrastate or interstate. *Id.* at 255. The Court rejected the argument because of the statute's undeniable effect on those who moved from out of state: "Appellant Evaro has been effectively penalized for his interstate migration, although this was accomplished under the guise of a county residence requirement. What would be unconstitutional if done directly by the State can no more readily be accomplished by a county at the State's direction." *Id.* at 256. Likewise, it does not matter that the tax freeze applies to everyone who moves into Muscogee County. The right of interstate travel must be seen as insuring new residents the same right to vital government benefits and privileges in the States to which they migrate as are enjoyed by other residents. *Id.* at 259-61. The right to receive vital government benefits on equal terms is arguable absent in any property taxation scheme that compels new arrivals to pay higher taxes for the same privileges of property ownership and the same accompanying government services that are received by longer-term residents for a lower price. Notwithstanding its general applicability, the County's tax scheme has an undeniable effect on those who have moved to the County from outside Georgia. The tax freeze is therefore unconstitutional.

Appendix B

IT IS ***ORDERED AND ADJUDGED*** that Plaintiffs' Motion for Summary Judgment is **GRANTED.** Defendants' Motion for Summary Judgment is **DENIED.**

IT IS ***FURTHER ORDERED*** that Defendants present to the Court within ninety days of the date of this Order a plan for termination of the tax freeze to become fully effective within a reasonable time not exceeding three calendar years following the effective date of this Order.

IT IS ***FURTHER ORDERED*** that Defendants' counsel consult with Plaintiffs' counsel during the ninety days allotted in an effort to secure the Plaintiffs' approval of the Order to be proposed. It is the request of the Court that the respective counsel collaborate in a constructive way to accomplish the directives of this Order.

Plaintiffs, as the prevailing party, are hereby awarded their reasonable attorneys' fees and expert fees pursuant to 42 U.S.C. § 1988.

This 24th day of June, 2002.

s/ George M. Peagler
George M. Peagler, Judge
Superior Court, Southwestern
Judicial Circuit
Sitting by special appointment by
Order of the Superior Court
Muscogee County,
Georgia dated September 6, 2000

APPENDIX C — STIPULATIONS OF THE PARTIES IN THE SUPERIOR COURT OF MUSCOGEE COUNTY, STATE OF GEORGIA

IN THE SUPERIOR COURT OF MUSCOGEE COUNTY STATE OF GEORGIA

Civil Action No: SU-2000-CV-3256

CM TAX EQUALIZATION FOUNDATION, INC.; HULETTE BOOTH; WILLIAM FEIGHNER; TERRELL GREEN; BETTIE RUTH HAYNES; MOSES HAYNES; KENNETH HENSON, JR.; EARLE F. LASSETER; SALLY BORK LASSETER; LISA D. MCNARRY; FAYE SHERRILL; RON SHERRILL; TED SHORT; PENNY SHORT; CARL J. THOMAS; CONNIE GRAY THOMAS; ERNESTINE WELLS; RICHARD WELLS; WILL WHITE; AMY WHITE; CHRISTOPHER WIGHTMAN; and ASTRID WIGHTMAN;

Plaintiffs,

v.

COLUMBUS-MUSCOGEE COUNTY CONSOLIDATED GOVERNMENT; MUSCOGEE COUNTY BOARD OF TAX ASSESSORS; LULA LUNSFORD HUFF, in her official capacity as Tax Commissioner, Muscogee County; and MUSCOGEE COUNTY BOARD OF EQUALIZATION;

Defendants.

Appendix C

STIPULATIONS

The parties hereby stipulate to the following facts in this matter, without necessity of further proof:

General Facts Regarding the Homestead Freeze

1. In the Columbus-Muscogee County Consolidated Government (hereinafter the "County"), the valuation of homestead property for ad valorem tax purposes is "frozen" at fair market value as of the later of January 1, 1983; or January 1 of the first year in which homestead exemption is claimed and allowed; or January 1 of the year following the last change in ownership (the "Homestead Freeze").

2. The frozen value of a parcel of homestead property stays frozen until the property is sold or transferred at death to someone other than a spouse, at which point it is revalued at the then-current fair market value in the hands of the new homeowner.

3. Major improvements to a home are added to the frozen value.

4. The frozen value of homestead property for County ad valorem tax purposes is determined without consideration of the ability to pay or income of the homestead owner.

5. The value of non-homestead property in the County, including rental residential property, is not "frozen" in the manner described in paragraphs 1-3 above.

6. The State of Georgia imposes an ad valorem tax on homestead property (owner-occupied residence) based upon the current fair market value of the property, not the "frozen" value of the property, and this tax amounts to 1/4 of a mill.

7. The state ad valorem tax referred to in paragraph 6 is collected and paid over to the State by the County.

8. In order to administer County ad valorem taxes and to collect the state ad valorem tax, the County makes an annual determination of both the current fair market value and the frozen value of each homestead property. For purposes of the state ad valorem tax, properties are assessed at full fair market value. The consolidated government maintains two separate databases to account for the separate assessments.

9. The revenues raised by property taxes fund the public duties and programs of the County, including, but not limited to local public schools; local law enforcement; local fire departments and emergency medical services; and general government departments, including engineering services and public works services.

Enactment and Continuation of the Homestead Freeze

10. The Homestead Freeze was enacted in 1982 pursuant to the local constitutional amendment ("LCA") process of the Georgia Constitution of 1976, Art. 12, § 1, ¶ 1.

11. In accordance with the LCA process, the Homestead Freeze was approved by a majority of registered Columbus/

Muscogee voters in the November 1982 general election. The vote in favor of the Homestead Freeze was 19,513 to 7,143, or roughly 73.2% to 26.8%. *See* 1983 Ga. L. 5210.

12. The procedure for enacting new LCAs was not retained in the 1983 revision to the Georgia Constitution, which provided that henceforth only "amendments of general and uniform applicability throughout the state shall be proposed, passed, or submitted to the people." Ga. Const. Art. 10, § 1, ¶ 1.

13. The Constitution of 1983 contained a "sunset" provision which preserved then existing LCAs until July 1, 1987.

14. Under the Constitution of 1983, local governments could continue LCAs beyond July 1, 1987, either by local law enacted prior to July 1, 1987, with or without a referendum as provided by law, or by an ordinance or referendum adopted by the local governing authority in the manner provided for the adoption of home rule amendments to a charter or local act. Ga. Const. Art. 11, § 1, ¶ 4(a).

15. The Homestead Freeze was continued in effect beyond July 1, 1987 by the passage of a local law. *See* 1986 Ga. L. 3800.

16. During the 1991 Session of the General Assembly, a local act was passed authorizing a local referendum on whether the Homestead Freeze should be repealed. *See* 1991 Ga. L. 4255.

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17. In a local referendum held on November 5, 1991, a majority of registered Columbus/Muscogee voters approved the county referendum that continued the Homestead Freeze. The vote *against* the proposed repeal of the Homestead Freeze was 24,247 to 5,731, or roughly 80.9% to 19.1%. *See* 1992 Ga. L. CCCLXXXVI.

Public Debate Regarding The Homestead Freeze

18. The parties stipulate as to the authenticity of the following records of the Council of Columbus, Georgia, which records are incorporated herein by reference and attached hereto as Exhibits:

(a) Resolution No. 667-80, dated December 23, 1980, and approved by a unanimous vote. The resolution states the Council's reasons for proposing the homestead freeze, including its desire to protect homeowners from "higher property assessments brought about by rampant inflation";

(b) Minutes of the December 23, 1980 Council Meeting;

(c) Resolution No. 108-91, dated February 26, 1991, and approved by a vote of 6-5. The resolution requested that the General Assembly repeal 1986 Ga. L. 3800. The voters of Columbus-Muscogee defeated the proposed repeal in a 1992 referendum;

(d) Minutes of the February 26, 1991 Council Meeting; and

(e) Minutes of the October 8, 1991 Council Meeting.

19. The parties stipulate as to the authenticity of the following published newspaper articles that reflect the public debate about the homestead freeze, which articles are incorporated herein by reference and attached hereto as Exhibits:

(a) Counts, Susan, *Council Studies Legislative Requests Today,* Columbus Ledger-Enquirer, Dec. 16, 1980, at A3;

(b) Counts, Susan, *Tax Relief Measure Faces Uphill Battle,* Columbus Ledger-Enquirer, Dec. 24, 1980, at B6;

(c) Wright, Ben, *Vote on Tax Change is Delayed,* Columbus Ledger-Enquirer, Feb. 20, 1991, at D1;

(d) Wright, Ben, *Columbus Council Divided on Killing Tax Assessment Freeze,* Columbus Ledger-Enquirer, Feb. 21, 1991, at D1;

(e) Wright, Ben, *Close Vote Expected on Property Tax Assessment Freeze,* Columbus Ledger-Enquirer, Feb. 26, 1991, at A1;

(f) Wright, Ben, *Heating Up in Favor of the Freeze,* Columbus Ledger-Enquirer, Oct. 1, 1991, at B1;

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(g) *Why Not Have a Town Meeting on Tax Freeze?*, Columbus Ledger-Enquirer, Oct. 3, 1991 at A9;

(h) *Mayor, Council Acted Wisely in Revoking Freeze*, Columbus Ledger-Enquirer, Feb. 28, 1991, at A8;

(i) Wright, Ben, *Land, Martin Debate Assessment Freeze*, Columbus Ledger-Enquirer, Oct. 10, 1991, at A1;

(j) Wright, Ben, *Pro-freeze Group Seeks Donations From its Supporters*, Columbus Ledger-Enquirer, Oct. 16, 1991, at B1;

(k) Wright, Ben, *For or Against Freeze? Go to a Forum Tonight*, Columbus Ledger-Enquirer, Oct. 17, 1991 at B1;

(l) Winn, Billy, *Lift the Freeze, Banish "Can't Do"*, Columbus Ledger-Enquirer, Oct. 22, 1991, A8;

(m) Lisby, Carroll, *Martin Has Fumbled on the Freeze*, Columbus Ledger-Enquirer, Oct. 24, 1991, at A6;

(n) Winn, Billy, *Some Who Support Lifting the Freeze*, Columbus Ledger-Enquirer, Oct. 27, 1991 at E2;

(o) Winn, Billy, *Tax Referendum Could Polarize City*, Columbus Ledger-Enquirer, Oct. 29, 1991 at A12;

(p) *More Opinions on the Referendum*, Columbus Ledger-Enquirer, Oct. 31, 1991, at A9;

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(q) *Readers Continue Contributions on Tax Freeze Issue,* Columbus Ledger-Enquirer, Nov. 1, 1991, at A11;

(r) Owen, Michael, *They Might Freeze in Washington,* Columbus Ledger-Enquirer, Nov. 2, 1991, at A4;

(s) Demetrius Patterson, *Groups Make Dueling Statements on Tax Freeze,* Columbus Ledger-Enquirer, Nov. 2, 1991, at B1;

(t) Wright, Ben, *Freeze Activists Work to Get Voters to Polls,* Columbus Ledger-Enquirer, A1;

(u) *Let's Thaw the Freeze So We Can Pull Together,* Columbus Ledger-Enquirer, Nov. 3, 1991, at E2;

(v) Blanchard, James, *Our Choice: Status Quo or Progress,* Columbus Ledger-Enquirer, Nov. 3, 1991, at E4;

(w) Land, Ted, *Foes Don't Have Corner on Fairness,* Columbus Ledger-Enquirer, at E4;

(x) Wright, Ben, *Large Voter Turnout Expected,* Columbus Ledger-Enquirer, Nov. 4, 1991, at A1;

(y) Wright, Ben, *Tax Freeze Vote Today,* Columbus Ledger-Enquirer, at A1;

(z) Winn, Billy, *Vote "Yes" to Lift the Tax Freeze,* Columbus Ledger-Enquirer, Nov. 5, 1991, at A6;

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(aa) Edelstein, Ken, *Legislators Mum on Tax Referendum,* Columbus Ledger-Enquirer, Oct. 27, 1991, at A1;

(bb) *Tax Freeze Vote Taught us all a Valuable Lesson,* Columbus Ledger-Enquirer, Nov. 7, 1991, at A8; and

(cc) Benham, Liza, *Election Process Smooth as Taxing Issue Brings Out Voters,* Columbus Ledger-Enquirer, Nov. 6, 1991, at A6.

Facts Regarding the Plaintiffs

20. Plaintiff CM Tax Equalization Foundation, Inc. (the "Foundation") is a private, non-profit corporation incorporated under the laws of the State of Georgia.

21. The officers of the Foundation are Joe M. Flournoy, who served on the Muscogee County Board of Tax Assessors from 1992 through 1998; John Flournoy, the president of Flournoy Development Company; and Will White, apartment developer, owner, and operator.

22. Plaintiffs Hulette Booth, William Feighner, Terrell Green, Bettie Ruth Haynes, Moses Haynes, Kenneth Henson, Jr., Earle F. Lasseter, Sally Bork Lasseter, Lisa D. McNarry, Faye Sherrill, Ron Sherrill, Ted Short, Penny Short, Carl J. Thomas, Connie Gray Thomas, Ernestine Wells, Richard Wells, Will White, Amy White, Astrid Wightman, and Christopher Wightman are adult residents of Muscogee County.

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23. Hulette Booth currently rents an apartment at 2510 Cherokee Avenue, in Muscogee County.

24. Hulette Booth has rented in Muscogee County for almost 20 years.

25. William Feighner is a long-time resident and former mayor of Columbus who currently resides at 6921 Marina Cove Court.

26. William Feighner's home was purchased in 1993.

27. Terrell Green and Lisa D. McNarry, husband and wife, moved to Muscogee County in 1997, to accept positions on the faculty of La Grange College.

28. Terrell Green and Lisa D. McNarry purchased a home at 525 C & D Double Churches Road when they moved to Muscogee County in 1997.

29. Moses and Bettie Ruth Haynes, husband and wife, have lived in Muscogee County for the past 20 years and currently rent a home at 3 Esquilline Courts.

30. Bettie Ruth Haynes, a civilian, is employed as a cook at Fort Benning.

31. Kenneth and Eileen Henson, husband and wife, own a home at 874 Graystone Drive in Columbus, which they purchased in 1994.

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32. Earle F. Lasseter and Sally Bork Lasseter, husband and wife, are long-time residents of Muscogee County who own a home at 6855 Ranch Forest Drive, which they purchased in 1986.

33. Earle F. Lasseter is a practicing attorney in Columbus.

34. Sally Lasseter served on the Muscogee County School Board from 1984 through 1994.

35. Faye Sherrill and her husband, Ron Sherrill, purchased their home at 6338 Dupree Drive in Muscogee County in July 1998.

36. Faye Sherrill retired after 26 years as a civil servant at Tinker Air Force Base, in Oklahoma and moved to Muscogee County.

37. Ron Sherrill retired from the United States Army; he was last stationed at Fort Benning.

38. Ted and Penny Short owned a home near downtown Columbus for almost 30 years until they decided they were ready to downsize and move to a smaller home.

39. In 1998, the Shorts sold their larger home and purchased a new, smaller home at 7750 Hillside Drive in Muscogee County.

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40. Carl and Connie Gray Thomas, husband and wife, rented for years in Muscogee County before they purchased their home at 2951 Luckie Street in Muscogee County in 1998.

41. Carl J. Thomas is a corrections officer at the Columbus Regional Youth Detention Center.

42. Connie Gray Thomas is employed at the military exchange at Fort Benning.

43. Richard and Ernestine Wells, husband and wife, purchased their home at 7206 Stone Creek Lane in Muscogee County in December 1998.

44. Richard Wells retired from the United States Army after serving at Fort Benning and decided to stay in the Columbus area.

45. Richard Wells works as a juvenile probation and parole specialist for the Department of Juvenile Justice Community Programs.

46. Will and Amy White, husband and wife, are longtime residents of Muscogee County.

47. Will and Amy White have lived in their current house at 106 Turtle Creek Court for 11 years.

48. The Whites are building a newer, larger house at 5182 Midland Trace in Muscogee County.

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49. Christopher E. Wightman and his wife Astrid Wightman are residents of Muscogee County.

50. Chris Wightman is a real estate agent.

51. Astrid Wightman is a nurse.

52. The Wightmans rented a home in Columbus for several years before purchasing their first home at 2847 17th Avenue in 1998.

Facts Regarding the Defendants

53. One or more of the defendants in this matter resides in Muscogee County.

54. The Columbus-Muscogee County Consolidated Government establishes the budget for county government operations each year and levies the mill rate necessary to fund the portion of the budget to be paid for by ad valorem tax. (Tax Comm'r Brochure).

55. The Muscogee County Board of Tax Assessors is responsible for determining taxability of property for ad valorem purposes, and for the appraisal, assessment, and equalization of all assessments within the County. (Tax Comm'r Brochure).

56. Lula Lunsford Huff, in her official capacity as Muscogee County Tax Commissioner, is responsible for performing all functions relating to billing, collecting, disbursing, and accounting for ad valorem taxes collected in the County. (Tax Comm'r Brochure).

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57. The Muscogee County Board of Equalization is responsible for hearing and adjudicating administrative appeals as to values, denial of Homestead exemptions, and taxability of property values and assessments made by the Board of Tax Assessors. (Tax Comm'r Brochure).

Operation of the Homestead Freeze

58. The basis for ad valorem taxation is the fair market value of the property, which is established as of January 1 of each year. (Tax Comm'r Brochure).

59. The ad valorem tax is levied on the assessed value of the property, which, by law, is established at 40% of fair market value. (Tax Comm'r Brochure).

60. The amount of ad valorem tax is determined by the tax rate (millage rate). The Elected County Board of Education recommends the millage rate, which, with very few exceptions, must be levied for the school board by the City Council. One mill equals to $1 for each $1,000 of assessed value, or .001. (Tax Comm'r Brochure).

61. The current millage rate for County ad valorem tax is 40 mills or .040.

62. The Standard Homestead Exemption in the County is equal to $2000 on the State ad valorem tax and $13,500 on the County ad valorem tax. (Tax Comm'r Brochure).

63. The Standard Homestead Exemption in the County was increased between 1983 and 1993, in the following increments:

1983 — $6237; 1984 — $6798; 1985 — $7614; 1986 — $8604; 1987 — $9464; 1988 — $10,032; 1989 — $10,433; 1990 — $13,041; 1991 — $13,432; 1993 — $13,500.

64. The increases in the Standard Homestead Exemption between 1983 and 1993 reflected increases in the tax digest as calculated by the formula contained in 1980 Ga. L. 2009.

65. Additional homestead exemptions are available to certain homeowners in the County, including the Standard Elderly School Tax Homestead Exemption, the Standard Elderly General Homestead Exemption, the Disabled Veterans Homestead Exemption, and the Floating or Varying Homestead Exemption. (Tax Comm'r Brochure).

66. The Standard Elderly School Tax Homestead Exemption, the Standard Elderly General Homestead Exemption, and the Floating or Varying Homestead Exemption are available to certain homeowners above certain specified ages and with incomes below certain specified levels. (Tax Comm'r Brochure).

67. The Disabled Veterans Homestead Exemption is available to veterans with certain types of very serious disabilities. (Tax Comm'r Brochure).

68. For County taxpayers who qualify for the Standard Homestead Exemption, but none of the additional homestead exemptions specified in paragraph 66 above, ad valorem tax for County ad valorem tax purposes is calculated according to the following formula: The Frozen value is multiplied

times .40 (40%) to determine the assessed value for County purposes. The Standard Homestead Exemption (currently $13,500, which is the maximum limit) is then deducted from the assessed value. The resulting amount (assessed value less the homestead exemption) is multiplied by the millage rate (currently .040), to produce the amount of County ad valorem tax due.

69. Under the Homestead Freeze, some properties of comparable fair market values are valued for County ad valorem tax purposes at different amounts.

Inflation and Millage Rates

70. According to the United States Department of Labor, Bureau of Labor Statistics, the average change in the Consumer Price Index, one of the most widely used measures of inflation, was 5.3 percent for the South Urban region in 1970.

71. According to the United States Department of Labor, Bureau of Labor Statistics, the average change in the Consumer Price Index, one of the most widely used measures of inflation, was 4.2 percent for the South Urban region in 1971.

72. According to the United States Department of Labor, Bureau of Labor Statistics, the average change in the Consumer Price Index, one of the most widely used measures of inflation, was 3.0 percent for the South Urban region in 1972.

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73. According to the United States Department of Labor, Bureau of Labor Statistics, the average change in the Consumer Price Index, one of the most widely used measures of inflation, was 6.4 percent for the South Urban region in 1973.

74. According to the United States Department of Labor, Bureau of Labor Statistics, the average change in the Consumer Price Index, one of the most widely used measures of inflation, was 12.2 percent for the South Urban region in 1974.

75. According to the United States Department of Labor, Bureau of Labor Statistics, the average change in the Consumer Price Index, one of the most widely used measures of inflation, was 9.7 percent for the South Urban region in 1975.

76. According to the United States Department of Labor, Bureau of Labor Statistics, the average change in Consumer Price Index, one of the most widely used measures of inflation, was 5.6 percent for the South Urban region in 1976.

77. According to the United States Department of Labor, Bureau of Labor Statistics, the average change in Consumer Price Index, one of the most widely used measures of inflation, was 6.6 percent for the South Urban region in 1977.

78. According to the United States Department of Labor, Bureau of Labor Statistics, the average change in Consumer Price Index, one of the most widely used measures of inflation, was 8.3 percent for the South Urban region in 1978.

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79. According to the United States Department of Labor, Bureau of Labor Statistics, the average change in Consumer Price Index, one of the most widely used measures of inflation, was 11.4 percent for the South Urban region in 1979.

80. According to the United States Department of Labor, Bureau of Labor Statistics, the average change in Consumer Price Index, one of the most widely used measures of inflation, was 13.1 percent for the South Urban region in 1980.

81. According to the United States Department of Labor, Bureau of Labor Statistics, the average change in Consumer Price Index, one of the most widely used measures of inflation, was 10.7 percent for the South Urban region in 1981.

82. According to the United States Department of Labor, Bureau of Labor Statistics, the average change in Consumer Price Index, one of the most widely used measures of inflation, was 6.4 percent for the South Urban region in 1982.

83. According to the United States Department of Labor, Bureau of Labor Statistics, the average change in the Consumer Price Index, one of the most widely used measures of inflation, was 3.3 percent for the South Urban region in 1983.

84. According to the United States Department of Labor, Bureau of Labor Statistics, the average change in the Consumer Price Index, one of the most widely used measures of inflation, was 4.1 percent for the South Urban region in 1984.

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85. According to the United States Department of Labor, Bureau of Labor Statistics, the average change in the Consumer Price Index, one of the most widely used measures of inflation, was 3.2 percent for the South Urban region in 1985.

86. According to the United States Department of Labor, Bureau of Labor Statistics, the average change in the Consumer Price Index, one of the most widely used measures of inflation, was 1.7 percent for the South Urban region in 1986.

87. According to the United States Department of Labor, Bureau of Labor Statistics, the average change in the Consumer Price Index, one of the most widely used measures of inflation, was 3.2 percent for the South Urban region in 1987.

88. According to the United States Department of Labor, Bureau of Labor Statistics, the average change in the Consumer Price Index, one of the most widely used measures of inflation, was 3.6 percent for the South Urban region in 1988.

89. According to the United States Department of Labor, Bureau of Labor Statistics, the average change in the Consumer Price Index, one of the most widely used measures of inflation, was 4.4 percent for the South Urban region in 1989.

90. According to the United States Department of Labor, Bureau of Labor Statistics, the average change in the

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Consumer Price Index, one of the most widely used measures of inflation, was 5.3 percent for the South Urban region in 1990.

91. According to the United States Department of Labor, Bureau of Labor Statistics, the average change in the Consumer Price Index, one of the most widely used measures of inflation, was 3.9 percent for the South Urban region in 1991.

92. According to the United States Department of Labor, Bureau of Labor Statistics, the average change in the Consumer Price Index, one of the most widely used measures of inflation, was 2.7 percent for the South Urban region in 1992.

93. According to the United States Department of Labor, Bureau of Labor Statistics, the average change in the Consumer Price Index, one of the most widely used measures of inflation, was 3.2 percent for the South Urban region in 1993.

94. According to the United States Department of Labor, Bureau of Labor Statistics, the average change in the Consumer Price Index, one of the most widely used measures of inflation, was 2.8 percent for the South Urban region in 1994.

95. According to the United States Department of Labor, Bureau of Labor Statistics, the average change in the Consumer Price Index, one of the most widely used measures of inflation, was 3.0 percent for the South Urban region in 1995.

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96. According to the United States Department of Labor, Bureau of Labor Statistics, the average change in the Consumer Price Index, one of the most widely used measures of inflation, was 3.1 percent for the South Urban region in 1996.

97. According to the United States Department of Labor, Bureau of Labor Statistics, the average change in the Consumer Price Index, one of the most widely used measures of inflation, was 2.1 percent for the South Urban region in 1997.

98. According to the United States Department of Labor, Bureau of Labor Statistics, the average change in the Consumer Price Index, one of the most widely used measures of inflation, was 1.3 percent for the South Urban region in 1998.

99. According to the United States Department of Labor, Bureau of Labor Statistics, the average change in the Consumer Price Index, one of the most widely used measures of inflation, was 2.0 percent for the South Urban region in 1999.

100. According to the United States Department of Labor, Bureau of Labor Statistics, the average change in the Consumer Price Index, one of the most widely used measures of inflation, was 3.2 percent for the South Urban region in 2000.

101. Tax District Number One of Columbus, Muscogee-County, Georgia ("District Number One") includes the majority of residential properties in the area.

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102. The millage rate for District Number One, net levies no exemptions, was 44.15 in 1972.

103. The millage rate for District Number One, net levies no exemptions, was 46.69 in 1973.

104. The millage rate for District Number One, net levies no exemptions, was 45.07 in 1974.

105. The millage rate for District Number One, net levies no exemptions, was 46.28 in 1975.

106. The millage rate for District Number One, net levies no exemptions, was 47.68 in 1976.

107. The millage rate for District Number One, net levies no exemptions, was 35.30 in 1977.

108. The millage rate for District Number One, net levies no exemptions, was 38.47 in 1978.

109. The millage rate for District Number One, net levies no exemptions, was 36.79 in 1979.

110. The millage rate for District Number One, net levies no exemptions, was 33.29 in 1980.

111. The millage rate for District Number One, net levies no exemptions, was 38.93 in 1981.

112. The millage rate for District Number One, net levies no exemptions, was 38.16 in 1982.

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113. The millage rate for District Number One, net levies no exemptions, was 35.65 in 1983.

114. The millage rate for District Number One, net levies no exemptions, was 35.71 in 1984.

115. The millage rate for District Number One, net levies no exemptions, was 35.41 in 1985.

116. The millage rate for District Number One, net levies no exemptions, was 33.33 in 1986.

117. The millage rate for District Number One, net levies no exemptions, was 36.00 in 1987.

118. The millage rate for District Number One, net levies no exemptions, was 36.48 in 1988.

119. The millage rate for District Number One, net levies no exemptions, was 33.78 in 1989.

120. The millage rate for District Number One, net levies no exemptions, was 37.47 in 1990.

121. The millage rate for District Number One, net levies no exemptions, was 38.51 in 1991.

122. The millage rate for District Number One, net levies no exemptions, was 39.89 in 1992.

123. The millage rate for District Number One, net levies no exemptions, was 40.08 in 1993.

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124. The millage rate for District Number One, net levies no exemptions, was 41.00 in 1994.

125. The millage rate for District Number One, net levies no exemptions, was 41.00 in 1995.

126. The millage rate for District Number One, net levies no exemptions, was 41.00 in 1996.

127. The millage rate for District Number One, net levies no exemptions, was 41.00 in 1997.

128. The millage rate for District Number One, net levies no exemptions, was 40.00 in 1998.

129. The millage rate for District Number One, net levies no exemptions, was 40.00 in 1999.

130. The millage rate for District Number One, net levies no exemptions, was 40.00 in 2000.

131. The millage rate for District Number One, net levies no exemptions, was 40.00 in 2001.

Examples from 2000 Tax Digest

132. For the tax year 2000, approximately 1773 homesteads in the County had a then-current fair market value of $75,000 (plus or minus 2.5%), according to the fair market valuations assessed for state ad valorem purposes. (Source: 2000 Digest Table C.)

a. Of those homes with a fair market value of $75,000, twenty-seven had assessed valuations of $13,500 or less. With the homestead exemption set at $13,500, the owners of those twenty-seven homes owed no County ad valorem tax at all.

b. More than 110 other homes with fair market values of $75,000 had assessed valuations of less than $16,000. With the County homestead exemption of $13,500, the owners of those homes owed on average less than $100 in County ad valorem tax.

c. Approximately 840 homes with fair market values of $75,000 had frozen valuations equal to current values. Those 840 homeowners owed an average of $660.00 in County ad valorem taxes.

133. For the tax year 2000, approximately 616 homesteads in the County had a fair market value of $125,000 (plus or minus 2.5%). (Source: 2000 Digest Table D.)

a. Twenty-seven of those homesteads had frozen valuations less than 50% of their current fair market values, meaning that the owners of those homes owed on average less than $460.00 in County taxes. The total tax owed, however, also reflects the homestead exemption and the Governor's tax credit.

b. Almost 290 of the homesteads at the $125,000 fair market value level had frozen values equal to current fair market values. Those 290 homeowners would have

owed an average of $1460.00 in County ad valorem taxes, compared to 27 of their neighbors who owed less than $460.00.

134. In one census tract in Muscogee County (digest map page 011) are two homesteads, nos. 25 and 37. Homestead no. 25 has a fair market value of $80,162, and homestead no. 37 has a fair market value of $76,792. Due in part to the Homestead Freeze, however, the owner of homestead no. 25, who also benefits from a homestead exemption for the elderly, owes $0 in County ad valorem taxes, while the owner of homestead no. 37 owes $689 in County ad valorem taxes.

135. In another census tract in Muscogee County (digest map page 028) are two homesteads, nos. 91 and 92, located on the same street, one block away from each other. Homestead no. 91 has a fair market value of $104,857, and homestead no. 92 has a fair market value of $101,480. Due to the Homestead Freeze, however, the owner of homestead no. 91 owes $20.60 in County ad valorem taxes, while the owner of homestead no. 92 owes $837.36 in County ad valorem taxes.

136. In another census tract in Muscogee County (digest map page 029) are two homesteads, nos. 94 and 95, located within a few blocks of each other. Homestead no. 94 has a fair market value of $113,307, and homestead no. 95 has a fair market value of $111,805. Due to the Homestead Freeze, however, the owner of homestead no. 94 owes $0 in County ad valorem taxes, while the owner of homestead no. 95 owes $1249 in County ad valorem taxes.

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137. In another census tract in Muscogee County (digest map page 033) are 30 homesteads, nos. 117-146, many located on common streets, within a few blocks of each other, with fair market values ranging from $54,000 to $59,600. Due to the Homestead Freeze, however, the owners of 19 of those homesteads owe $0 in County ad valorem taxes, while the owners of the remaining 11 homesteads owe between $208 and $401 in County ad valorem taxes. The owner of tract 117 benefits from the homestead exemption for the elderly and pays $3.70.

138. In another census tract in Muscogee County (digest map page 034) are three homesteads, nos. 148, 152, and 201. Homestead nos. 148 and 201 are located on the same street. Homestead no. 148 has a fair market value of $98,297, homestead no. 152 has a fair market value of $95,007, and homestead no. 201 has a fair market value of $98,017. Due in part to the Homestead Freeze, however, the owner of homestead no. 148, who also benefits from an H5 or VA Exemption, owes $0 in County ad valorem taxes, the owner of homestead no. 152 owes $118.06 in County ad valorem taxes, and the owner of homestead no. 201 owes $885.47 in County ad valorem taxes.

139. In another census tract in Muscogee County (digest map page 047) are two homesteads, nos. 241 and 245, located on the same street. Homestead no. 241 has a fair market value of $48,170, and homestead no. 245 has a fair market value of $47,815. Due to the Homestead Freeze, however, the owner of homestead no. 241, who also benefits from a homestead exemption for the elderly, owes $282 in County ad valorem taxes, while the owner of homestead no. 245 owes $82.23 in County ad valorem taxes.

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140. In another census tract in Muscogee County (digest map page 083) are 12 homesteads, nos. 498-509, many located on common streets, with fair market values ranging from $84,000 to $91,800. Due to the Homestead Freeze, however, the owner of 1 of those homesteads owes $6.87 in County ad valorem taxes, 8 other owners owe less than $400 in County ad valorem taxes, and two homeowners owe more than $690.02 in County ad valorem taxes.

141. In another census tract in Muscogee County (digest map page 086) are five homesteads (nos. 524, 527, 529, 540, and 544) with fair market values of approximately $75,000. Due to the Homestead Freeze, however, the owners of those homesteads owe, respectively, $16.23, $5.51, $96.10, $451.61, and $519.10 in County ad valorem taxes.

142. In another census tract in Muscogee County (digest map page 095) are 35 homesteads (593-627), many located on common streets, with fair market values within 5% of $70,935. Due to the Homestead Freeze, however, the owners of 4 of those homesteads owe $0 in County ad valorem taxes, 10 homeowners owe less than $100 in County ad valorem taxes, 11 homeowners owe between $100 and $500 in County ad valorem taxes, and 10 homeowners owe more than $500 in County ad valorem taxes.

143. In another census tract in Muscogee County (digest map page 097) are two homesteads, nos. 631 and 635. Homestead no. 631 has a fair market value of $170,037 and homestead no. 635 has a fair market value of $163,710. Due to the Homestead Freeze, however, the owner of

homestead no. 631 owes $640.84 in County ad valorem taxes, while the owner of homestead no. 635 owes $1495.99 in County ad valorem taxes.

144. In another census tract in Muscogee County (digest map page 102) are two homesteads, nos. 771 and 781. Homestead no. 771 has a fair market value of $154,182 and homestead no. 781 has a fair market value of $153,617. Due to the Homestead Freeze, however, the owner of homestead no. 771 owes $786.61 in County ad valorem taxes, while the owner of homestead no. 781 owes $1775.07 in County ad valorem taxes.

145. The owner of one homestead in the County (parcel id. no. 069 019 011) with a fair market value of $283,625, owed $16.61 in County ad valorem taxes, $.25 less than was owed by the owner of another homestead in the County (parcel id. no. 047 020 006) with a fair market value of $48,432.

146. The Homestead Freeze produces many examples of homesteads with fair market values that vary by more than 100% but which are subject to identical amounts of County ad valorem tax:

a. Parcel id. no. 032 038 003, with a fair market value of $159,980, and whose owner benefits from the homestead exemption for the elderly, is subject to $14 of County ad valorem tax, while Parcel id. no. 040 010 008, fair market value of $57,080, is subject to $3.71.

b. Parcel id. no. 036 010 015, with a fair market value of $128,950, and whose owner benefits from the homestead exemption for the elderly, is subject to $175.96 of County ad valorem tax, while Parcel id. no. 015 020 005, fair market value of $54,150, is subject to $3.42.

c. Parcel id. no. 100 028 020, with a fair market value of $124,655, whose owner benefits from the homestead exemption for the elderly, is subject to $3.30 of County ad valorem tax, while Parcel id. no. 015 011 009, fair market value of $56,377, is subject to 219.23.

d. Parcel id. no. 017 031 009, with a fair market value of $170,285, is subject to $617.62 of County ad valorem tax, while Parcel id. no. 101 016 066, fair market value of $84,550, is subject to $608.25.

e. Parcel id. no. 068 059 001, with a fair market value of $289,760, is subject to $1,226.94 of County ad valorem tax, while Parcel id. no. 191 028 033, fair market value of $122,175, is subject to $1,210.26.

f. Parcel id. no. 170 001 007, with a fair market value of $451,517, is subject to $2,157.24 of County ad valorem tax, while Parcel id. no. 127 003 004, fair market value of $193,660, is subject to $1,770.10.

147. Under the Homestead Freeze, one homestead (parcel i.d. no. 180 019 020) with a fair market value of $139,945, is subject to a greater amount of County ad valorem tax than are homesteads with fair market values of $359,185 (parcel id. no. 182 002 044); $333,770 (parcel id. 025 015 002); $289,760

(parcel i.d. no. 068 059 001); $283,960 (parcel id. no. 068 060 001); and $283,628 (parcel id. no. 069 019 011).

148. Under the Homestead Freeze, a homeowner with a frozen value of $75,000 and a current value of $150,000 will pay the same amount of tax ($660.00) as the purchaser of a new home for $75,000, and will pay one-third of the tax paid by his new neighbor ($1860.00) who has just purchased a $150,000 home.

149. Persons who have owned the same homestead since 1983 enjoy the full benefit of an increase in their homestead exemption from $6237 to $13,500, purportedly to offset inflation, even though the valuation of their homes for County ad valorem purposes was frozen as of 1983 and therefore has not increased with inflation.

150. The amount of the inflation adjustment for a homeowner whose assessed value has been frozen since 1983 has increased from $6237 in 1983, to $13,500 in 1993, or a total increase of $7263.

The parties anticipate that there may be additional stipulations of fact.

Appendix C

Stipulated to:

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APPENDIX D — SUPPLEMENTAL STIPULATIONS OF THE PARTIES (SEPTEMBER 28, 2001) IN THE SUPERIOR COURT OF MUSCOGEE COUNTY, GEORGIA

IN THE SUPERIOR COURT OF MUSCOGEE COUNTY STATE OF GEORGIA

Civil Action No: SU-2000-CV-3256

CM TAX EQUALIZATION FOUNDATION, INC.; HULETTE BOOTH; WILLIAM FEIGHNER; TERRELL GREEN; BETTIE RUTH HAYNES; MOSES HAYNES; KENNETH HENSON, JR.; EARLE F. LASSETER; SALLY BORK LASSETER; LISA D. MCNARRY; FAYE SHERRILL; RON SHERRILL; TED SHORT; PENNY SHORT; CARL J. THOMAS; CONNIE GRAY THOMAS; ERNESTINE WELLS; RICHARD WELLS; WILL WHITE; AMY WHITE; CHRISTOPHER WIGHTMAN; and ASTRID WIGHTMAN;

Plaintiffs,

v.

COLUMBUS-MUSCOGEE COUNTY CONSOLIDATED GOVERNMENT; MUSCOGEE COUNTY BOARD OF TAX ASSESSORS; LULA LUNSFORD HUFF, in her official capacity as Tax Commissioner, Muscogee County; and MUSCOGEE COUNTY BOARD OF EQUALIZATION;

Defendants.

SUPPLEMENTAL STIPULATIONS

The parties hereby stipulate to the following additional facts in this matter, without necessity of further proof:

Appendix D

151. The Columbus-Muscogee County Consolidated Government (hereinafter the "County") collected a total of $26,299,050.68 in property taxes in fiscal year 1975. Of that amount, $12,922,007.01 were city collections and $13,205,997.40 were school collections.

152. The County collected a total of $28,092,611.81 in property taxes in fiscal year 1976. Of that amount, $14,143,444.41 were city collections and $13,768,838.01 were school collections.

153. The County collected a total of $29,475,561.61 in property taxes in fiscal year 1979. Of that amount, $10,460,097.64 were city collections and $18,782,996.78 were school collections.

154. The County collected a total of $29,872,117.05 in property taxes in fiscal year 1980. Of that amount, $11,798,984.81 were city collections and $17,823,764.94 were school collections.

155. The County collected a total of $30,706,984.94 in property taxes in fiscal year 1981. Of that amount, $10,048,682.33 were city collections and $19,139,261.61 were school collections.

156. The County collected a total of $37,388,577.63 in property taxes in fiscal year 1982. Of that amount, $15,440,934.61 were city collections and $20,397,600.72 were school collections.

Appendix D

157. The County collected a total of $38,235,553.19 in property taxes in fiscal year 1983. Of that amount, $15,603,064.68 were city collections and $21,048,448.87 were school collections.

158. The County collected a total of $38,525,765.83 in property taxes in fiscal year 1984. Of that amount, $15,340,629.80 were city collections and $21,497,908.30 were school collections.

159. The County collected a total of $42,076,355.06 in property taxes in fiscal year 1985. Of that amount, $16,999,275.11 were city collections and $23,327,525.13 were school collections.

160. The County collected a total of $45,700,179.63 in property taxes in fiscal year 1986. Of that amount, $17,810,894.07 were city collections and $26,054,611.96 were school collections.

161. The County collected a total of $48,041,332.19 in property taxes in fiscal year 1987. Of that amount, $19,278,905.17 were city collections and $26,911,956.39 were school collections.

162. The County collected a total of $54,003,924.49 in property taxes in fiscal year 1988. Of that amount, $16,999,275.11 were city collections and $23,327,525.13 were school collections.

Appendix D

163. The County collected a total of $92,134,489.38 in property taxes in fiscal year 1989. Of that amount, $58,328,506.61 were city collections and $31,912,230.18 were school collections.

164. The County collected a total of $63,344,251.44 in property taxes in fiscal year 1990. Of that amount, $25,496,679.86 were city collections and $35,850,980.24 were school collections.

165. The County collected a total of $69,279,740.72 in property taxes in fiscal year 1991. Of that amount, $25,264,612.81 were city collections and $42,292,910.62 were school collections.

166. The County collected a total of $76,386,577.79 in property taxes in fiscal year 1992. Of that amount, $29,360,821.10 were city collections and $45,113,601.18 were school collections.

167. The County collected a total of $83,617,776.64 in property taxes in fiscal year 1993. Of that amount, $32,915,127.44 were city collections and $46,783,936.86 were school collections.

168. The County collected a total of $88,832,233.74 in property taxes in fiscal year 1994. Of that amount, $35,421,976.61 were city collections and $49,195,800.03 were school collections.

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169. The County collected a total of $94,104,424.50 in property taxes in fiscal year 1995. Of that amount, $38,553,023.77 were city collections and $51,258,791.02 were school collections.

170. The County collected a total of $98,002,161.71 in property taxes in fiscal year 1996. Of that amount, $40,427,427.80 were city collections and $53,355,439.62 were school collections.

171. The County collected a total of $101,815,368.68 in property taxes in fiscal year 1997. Of that amount, $41,542,581.40 were city collections and $56,071,739.68 were school collections.

172. The County collected a total of $98,938,321.67 in property taxes in fiscal year 1998. Of that amount, $40,675,953.24 were city collections and $55,209,805.91 were school collections.

173. The County collected a total of $108,481,832.33 in property taxes in fiscal year 1999. Of that amount, $45,313,131.04 were city collections and $58,928,570.79 were school collections.

174. The County collected a total of $119,256,968.94 in property taxes in fiscal year 2000. Of that amount, $49,923,891.60 were city collections and $64,455,735.22 were school collections.

175. The County collected a total of $122,551,876.38 in property taxes in fiscal year 2001. Of that amount, $51,238,746.90 were city collections and $66,319,910.75 were school collections.

176. A summary of the information underlying supplemental stipulations 151 through 175 is attached as Exhibit "dd" hereto, the authenticity of which is stipulated to by the parties.

177. In stipulations 151 through 175, for any given year, the "total" amount of property tax collections does not necessarily equal the sum of city collections and school collections. The "total" collections number also includes collections for the state property tax, bond indebtedness, and Bibb City collections.

178. Prior to the date of these stipulations, Plaintiffs William Feighner, Terrell Green, Lisa D. McNarry, Earle F. Lasseter, Sally Bork Lasseter, Faye Sherrill, Ron Sherrill, Ted Short, Penny Short, Carl J. Thomas, Connie Gray Thomas, Ernestine Wells, Richard Wells, Will White, Amy White, Christopher Wightman, and Astrid Wightman have not challenged the constitutionality of the Homestead Freeze before the County Board of Equalization.

179. Plaintiffs CM Tax Equalization Foundation, Inc., Hulette Booth, Bettie Ruth Haynes, and Moses Haynes do not own homestead property in Muscogee County and so have not received ad valorem property tax assessments subject to appeal to the County Board of Equalization.

180. Plaintiff Kenneth Henson, Jr., has challenged the constitutionality of the Homestead Freeze before the County Board of Equalization.

Appendix D

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Appendix D

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Lula Lunsford Huff, C.P.A.
Tax Commissioner

FISCAL YEAR COLLECTIONS

FY 2001	$122,551,876.38
FY 2000	$119,256,968.94
FY 1999	$108,481,832.33
FY 1998	$98,938,321.67
FY 1997	$101,815,368.68
FY 1998	$98,938,321.67
FY 1997	$101,815,368.68
FY 1996	$98,002,161.71
FY 1995	$94,104,424.00
FY 1994	$88,832,233.74
FY 1993	$83,699,692.65
FY 1992	$76,386,577.79
FY 1991	$69,279,740.72
FY 1990	$63,344,251.44
FY 1989	$58,134,489.38
FY 1988	$54,003,924.49
FY 1987	$48,041,332.19
FY 1986	$45,700,179.63
FY 1985	$42,076,355.06
FY 1984	$38,525,765.83
FY 1983	$38,235,553.19
FY 1982	$37,388,577.63
FY 1981	$30,706,984.94
FY 1980	$29,872,117.05
FY 1979	$29,475,561.61
FY 1978	
FY 1977	
FY 1976	$28,092,611.81
FY 1975	$26,299,050.68

EXHIBIT
dd

Appendix D

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TAX COMMISSIONER'S OFFICE

08/21/2001

FISCAL YEAR COLLECTIONS

	1976	1978	1977	1978	1979	1980	1981
TOTAL CITY COLLECTIONS	$12,922,007.01	$14,143,444.41			$10,460,087.84	$11,796,984.81	$10,048,882.33
TOTAL SCHOOL COLLECTIONS	$13,205,997.40	$13,768,838.01			$16,782,996.78	$17,823,764.94	$19,139,281.81
TOTAL STATE COLLECTIONS	$168,673.84	$178,474.25			$230,281.91	$247,859.48	$1,518,100.82
TOTAL BID COLLECTIONS							
BIBB CITY COLLECTIONS	$1,372.83	$1,855.14			$2,185.28	$1,907.82	$940.18
GRAND TOTAL COLLECTIONS	$26,299,050.68	$28,092,611.81	$0.00	$0.00	$29,475,561.81	$29,872,117.05	$30,706,984.94

	1982	1983	1984	1985	1986	1987	1988	1989	1990	1991
TOTAL CITY COLLECTIONS	$16,440,934.81	$15,603,054.68	$15,340,829.80	$16,999,276.11	$17,810,894.07	$18,278,905.17	$23,948,703.09	$59,328,506.61	$25,496,679.86	$25,254,612.81
TOTAL SCHOOL COLLECTIONS	$20,397,606.72	$21,048,448.87	$21,467,906.30	$23,327,525.13	$26,054,611.96	$26,911,968.39	$21,121,222.10	$31,912,230.18	$35,850,960.24	$42,292,910.82
TOTAL STATE COLLECTIONS	$1,549,129.59	$1,562,941.60	$1,696,369.30	$1,746,433.38	$1,832,338.07	$1,849,087.87	$1,932,015.47	$1,891,834.62	$1,994,386.25	$1,720,802.96
TOTAL BID COLLECTIONS										
BIBB CITY COLLECTIONS	$912.80	$1,100.04	$858.43	$1,121.43	$2,337.53	$1,372.78	$1,983.83	$1,917.97	$2,205.09	$1,614.31
GRAND TOTAL COLLECTIONS	$37,388,677.83	$38,235,563.19	$38,525,765.83	$42,076,356.06	$45,700,179.63	$46,041,332.19	$54,003,924.49	$92,134,489.38	$63,344,251.44	$69,270,740.72

	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001
TOTAL CITY COLLECTIONS	$29,360,821.10	$32,915,127.44	$35,421,978.81	$38,553,023.77	$40,427,427.80	$41,542,681.40	$40,678,853.24	$45,313,131.04	$49,922,891.80	$61,238,746.90
TOTAL SCHOOL COLLECTIONS	$45,113,501.18	$48,783,936.86	$49,195,800.03	$51,258,791.02	$53,355,432.82	$56,071,738.98	$55,209,805.91	$58,928,570.79	$64,455,735.22	$68,310,910.75
TOTAL STATE COLLECTIONS	$1,810,971.38	$3,998,227.38	$4,213,973.08	$4,292,809.71	$4,219,294.29	$4,231,047.80	$3,052,562.52	$4,249,130.50	$4,483,321.04	$4,581,373.87
TOTAL BID COLLECTIONS									$424,021.06	$431,845.06
BIBB CITY COLLECTIONS	$1,184.15	$2,400.87	$584.02							
GRAND TOTAL COLLECTIONS	$76,386,577.79	$83,699,892.85	$88,832,233.74	$94,104,424.50	$98,002,161.71	$101,845,368.68	$98,938,321.67	$108,491,832.33	$119,286,968.94	$122,651,876.38

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APPENDIX E — RELEVANT STATUTORY AND CONSTITUTIONAL PROVISIONS

Ga. L. 1981, pp. 1926-1927

MUSCOGEE COUNTY—VALUATION OF HOMESTEAD PROPERTY

Proposed Amendment to the Constitution
No. 76 (House Resolution No. 271)
A RESOLUTION

Proposing an amendment to the Constitution so as to provide for the valuation of certain homestead property in Muscogee County for purposes of ad valorem taxation for school and consolidated city-county government purposes; to provide for other matters relative to the foregoing; to provide for the submission of this amendment for ratification or rejection; and for other purposes.

BE IT RESOLVED BY THE GENERAL ASSEMBLY OF GEORGIA:

Section 1. Article VII, Section I, Paragraph III of the Constitution of the State of Georgia is hereby amended by adding at the end thereof the following paragraph:

"Subject to the conditions and limitations specified by law, homestead property in Muscogee County shall be valued for purposes of ad valorem taxation for school and city-county consolidated government purposes based upon the fair market value of the property as of January 1, 1983; or as of January 1 of the first year when homestead exemption is allowed and claimed after January 1,

1983; or as of January 1 of the year following the last change of ownership after January 1, 1983, whichever is later. The value of any improvements which are made after the base fair market value is established and which require a building permit to be obtained shall be added to the established base fair market value. The provisions of this paragraph shall apply with respect to valuation of any homestead property only so long as the property is actually occupied by the owner primarily as a homestead and is claimed and qualifies for the homestead exemption allowed under Georgia law. As used in this paragraph, homestead shall have the meaning specified by law for purposes of exemption from taxation, except that the term shall include not more than two acres of land upon which the residence is located or which immediately surrounds the residence. For the purposes of this paragraph, any change of title between spouses shall not be considered a sale, purchase, or change of ownership. The assessed value of such homestead property for the purposes of taxation as specified in this paragraph shall be the value determined pursuant to this paragraph multiplied by the percentage specified by law for assessment of tangible property; provided, however, in case of error, or in case incorrect information is provided, the Board of Tax Assessors may make correction to the January 1, 1983, value; or the value on January 1 of the first year when homestead exemption was allowed and claimed after January 1, 1983; or the value on January 1 of the year following the last change of ownership after January 1, 1983, whichever is later. This paragraph shall not affect state taxation."

Appendix E

Ga. Const. art. vii, § 1, para. 3(a)

(a) All taxes shall be levied and collected under general laws and for public purposes only. Except as otherwise provided in subparagraphs (b), (c), (d), and (e), all taxation shall be uniform upon the same class of subjects within the territorial limits of the authority levying the tax.

Ga. Const. art. viii, § 6, para. 1(a)

(a) The board of education of each school system shall annually certify to its fiscal authority or authorities a school tax not greater than 20 mills per dollar for the support and maintenance of education. Said fiscal authority or authorities shall annually levy said tax upon the assessed value of all taxable property within the territory served by said school system, provided that the levy made by an area board of education, which levy shall not be greater than 20 mills per dollar, shall be in such amount and within such limits as may be prescribed by local law applicable thereto.

Ga. Const. art. x, § 1, para. 1

Amendments to this Constitution or a new Constitution may be proposed by the General Assembly or by a constitutional convention, as provided in this article. Only amendments which are of general and uniform applicability throughout the state shall be proposed, passed, or submitted to the people.

Appendix E

U.S. Const. art. iv, § 2, cl. 1

> **Section 2.** The Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States.

U.S Const. art. iv, § 4

> **Section 4.** The United States shall guarantee to every State in this Union a Republican Form of Government, and shall protect each of them against Invasion; and on Application of the Legislature, or of the Executive (when the Legislature cannot be convened) against domestic Violence.

U.S Const. amend. XIV, § 1

> **Section 1.** All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

(2)

No. 03-121

Supreme Court, U.S.
FILED
AUG 22 2003
OFFICE OF THE CLERK

In The

Supreme Court of the United States

CM TAX EQUALIZATION FOUNDATION, INC., *et al.*,

Petitioners,

v.

COLUMBUS-MUSCOGEE COUNTY CONSOLIDATED GOVERNMENT, *et al.*,

Respondents.

On Petition For A Writ Of Certiorari To The Supreme Court Of Georgia

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

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BRIEF IN OPPOSITION

This Brief in Opposition is filed on behalf of Respondents Columbus-Muscogee County Consolidated Government (the "Consolidated Government"), Muscogee County Board of Tax Assessors, Lula Lunsford Huff in her official capacity as Tax Commissioner of Muscogee County, and the Muscogee County Board of Equalization ("Respondents") in response to the Petition for a Writ of Certiorari filed by CM Tax Equalization Foundation, *et al.* (the "Petition").

I. STATEMENT OF THE CASE

The Petition raises legal issues that are virtually identical to those that this Court decided in *Nordlinger v. Hahn*, 505 U.S. 1, 112 S. Ct. 2326 (1992). Because the Supreme Court of Georgia's decision below does not conflict with this Court's analysis of the acquisition-value based property tax system set forth in *Nordlinger*, Respondents strongly contend that this case does not merit review.[1]

A. Background

Petitioners ask this Court to strike down a local amendment to the Georgia Constitution that the voters of Columbus-Muscogee County approved in 1982 by an

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[1] Petitioners relegate their discussion of *Nordlinger* to the last section of their brief. (*See* Petition at 26.) Because *Nordlinger* should control any analysis in this case Respondents will deviate from the structure of Petitioners' brief and address it first.

almost three-to-one margin (the "Amendment"). The Amendment promulgated an acquisition-value based property tax system that was designed to protect Columbus-Muscogee homeowners from inflation (the "Homestead Freeze"). The Amendment provides in relevant part:

> Homestead property in Muscogee County shall be valued for purposes of ad valorem taxation for school and city-county consolidated government purposes based upon the fair market value of the property as of January 2, 1983; or as of January 1 of the first year when homestead exemption is allowed and claimed after January 1, 1983; or as of January 1 of the year following the last change of ownership after January 1, 1983, whichever is later.

1981 Ga. Laws 1926 (Respondents' app. at 5a).[2]

Elected council members, commentators, and neighbors publicly and exhaustively debated the Amendment many months before Columbus-Muscogee County residents resoundingly approved the measure in 1982 – and overwhelmingly opposed an attempt to repeal it in 1991.

B. The History of the Homestead Freeze

On December 23, 1980, the Council of Columbus, Georgia ("the Council") unanimously adopted a resolution proposing the Amendment. The Council sought to protect homeowners from "higher property assessments brought about by rampant inflation." (Respondents' app. at 24a.)

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[2] "Respondents' app." refers to the appendices of this Brief in Opposition to Petition For a Writ of Certiorari.

In the three years preceding the 1982 vote on the Homestead Freeze, inflation had soared into double digits. The average change in the Consumer Price Index, the most widely used measure of inflation, for the South Urban region was 11.4% in 1979, 13.1% in 1980, and 10.7% in 1981. (*See* Petition app. at 49a.) Significantly, the Council emphasized that the value of local single family homes was increasing *even more sharply* than general inflation rates. (*See* Respondents' app. at 24a.)

Both chambers of Georgia's General Assembly unanimously approved the proposed Amendment during the 1981 session. *See* 1981 Ga. Laws 1926 (Respondents' app. at 5a). The Amendment enjoyed wide local support, and a substantial majority of Columbus-Muscogee voters approved it in the 1982 general election. The vote in favor of the Homestead Freeze was 19,513 to 7,143, or 73.2% to 26.8%. *See* 1983 Ga. Laws 5210 (Respondents' app. at 11a). The Georgia Constitution of 1983, also approved in the 1982 general election, eliminated the procedure for enacting further local constitutional amendments and provided that from then on, only "amendments of general and uniform applicability throughout the state shall be proposed, passed, or submitted to the people." GA. CONST. art. X, § 1, ¶ 1 (Respondents' app. at 26a). The 1983 Constitution contained a provision preserving then-existing local constitutional amendments until at least July 1, 1987, and afterwards if they were expressly continued. *See* GA. CONST. art. XI, § 1, ¶ 4 (Respondents' app. at 26a). The Homestead Freeze was continued in effect beyond July 1, 1987, by the General Assembly's passage of a local law. *See* GA. CONST. art. XI, § 1, ¶ 4(a) (Respondents' app. at 26a); 1986 Ga. Laws 3800 (Respondents' app. at 12a).

During the 1991 Regular Session of the General Assembly, legislation was passed authorizing a local referendum on whether the Homestead Freeze should be repealed. *See* 1991 Ga. Laws 4255 (Respondents' app. at 15a). In a referendum held November 5, 1991, an overwhelming majority of Columbus-Muscogee residents voted to keep the Homestead Freeze. The vote *against* the proposed repeal was 24,247 to 5,731, or 80.9% to 19.1%. *See* 1992 Ga. Laws CCCLXXXVI (Respondents' app. at 20a). Thus, voters showed even wider support for the Homestead Freeze after they had the opportunity to experience its positive effects.

Having twice failed to defeat the Homestead Freeze at the ballot box, the Petitioners filed this action on August 16, 2000, in an effort to invalidate it judicially. Petitioner CM Tax Equalization Foundation, Inc. ("CM Tax") is a corporation run by a coalition of property developers, and its sole purpose is to finance this litigation. CM Tax's President is John Flournoy, president of Flournoy Development Company, which develops apartments in the Columbus-Muscogee County area. (*See* Petition app. at 40a.) Another officer of CM Tax is an "apartment developer, owner and operator" in Columbus-Muscogee County. (*Id.*)

Relying on *Nordlinger v. Hahn*, 505 U.S. 1, 112 S. Ct. 2326 (1992), the Supreme Court of Georgia held that the Homestead Freeze did not violate the U.S. Constitution. *See Columbus-Muscogee County Consol. Gov't v. CM Tax Equalization Found., Inc.*, 276 Ga. 332, 579 S.E.2d 200 (Ga. 2003). Petitioners now ask this Court to reverse.

II. ARGUMENT

A. Petitioners Have Failed to State Any "Compelling Reasons" for Review.

1. Standard of Review

"A petition for a writ of certiorari will be granted only for compelling reasons." Supreme Court Rule 10. This Court has been reluctant to expend its resources considering cases in which (1) an asserted conflict between decisions is illusory; (2) a federal question is "wanting" or the case could be decided on non-federal grounds; and (3) the questions presented are important "merely to the litigants" and do not "present an issue of immediate public significance." *Rice v. Sioux City Mem. Park Cemetery, Inc.*, 349 U.S. 70, 79, 75 S. Ct. 614, 620 (1955).

2. The Decision Below Does Not Conflict With This Court's Decisions on Acquisition-Value Property Tax Systems.

The holdings of the court below are entirely consistent with the holdings of this Court. This Court has addressed whether acquisition-value based property tax systems violate the Fourteenth Amendment's Equal Protection Clause in two cases, *Nordlinger v. Hahn*, 505 U.S. 1, 112 S. Ct. 2326 (1992), and *Allegheny Pittsburgh Coal Co. v. County Commission of Webster County, West Virginia*, 488 U.S. 336, 109 S. Ct. 633 (1989). This Court struck down the property tax system at issue in *Allegheny* but three years later upheld the factually distinct system at issue in *Nordlinger*. *Nordlinger* controls here for two reasons: (1) the property tax system in *Nordlinger* is almost identical to the system at issue here; and (2) the Court in

Nordlinger so narrowed the *Allegheny* holding that it does not factually apply in this case.

(a) The Court Below Correctly Applied *Nordlinger*.

The Georgia Supreme Court correctly decided that under *Nordlinger*, the Homestead Freeze did not violate equal protection. In *Nordlinger*, this Court upheld a property tax assessment system almost identical to the one at issue here. The property tax system was authorized by Proposition 13, a referendum that became an amendment to California's constitution after it was approved by a majority of California voters. *See Nordlinger*, 505 U.S. at 3-4, 112 S. Ct. at 2328. Proposition 13 capped or "froze" real property taxes at 1% of a property's "full cash value." It defined the "full cash value" as the assessed valuation as of 1975. *Id.* at 5, 112 S. Ct. at 2329. Valuations were reassessed only when property was sold or new construction occurred on the property. *See id.* The value of property not sold or improved was frozen at 1975 values, except for a nominal 2% adjustment for inflation each year. This system produced "dramatic disparities in the taxes paid by persons owning similar pieces of property." *Id.* at 6, 112 S. Ct. at 2329.

Stephanie Nordlinger purchased her home thirteen years after some of her neighbors. *See id.* at 6-7, 112 S. Ct. at 2330. As a result, her property taxes were about five times higher than those who owned comparable homes

with assessed values "frozen" under Proposition 13.[3] *See id.* at 7, 112 S. Ct. at 2330. She claimed the classification of new owners versus old owners under Proposition 13 violated the Equal Protection Clause of the United States Constitution. *See id.* at 8, 112 S. Ct. at 2330. Her claims were rejected at all levels of the California judicial system, and Nordlinger sought review from this Court. *See id.* at 9, 112 S. Ct. at 2331.

This Court analyzed the Proposition 13 system under the rational basis standard of review, which requires that classifications in laws need only "rationally further[ ] a legitimate state interest." *Id.* at 11, 112 S. Ct. at 2332. The Court noted that "in general, the Equal Protection Clause is satisfied so long as there is a plausible policy reason for the classification." *Id.*

The assessment system satisfied the rational basis test because it furthered the state's legitimate interest in promoting "neighborhood preservation, continuity, and stability." *Id.* at 12, 112 S. Ct. at 2333. The system discouraged high turnover in neighborhoods and protected lower-income families against being forced out of their communities by "gentrification." *Id.* Furthermore, this Court concluded that new homeowners do not have the same reliance interest in the lower tax values as do long-time owners. *See id.* Even though the Proposition 13 system created "staggering" differences in assessments of comparable property, it did not violate equal protection

[3] This Court noted evidence of other homeowners paying seventeen times more than comparable properties. *See Nordlinger*, 505 U.S. at 7 n.2, 112 S. Ct. at 2330 n.2.

because it was rationally related to these legitimate government interests. *Id.* at 6, 17, 112 S. Ct. at 2329, 2335.

Relying on *Nordlinger*, in *Fitzgerald v. Racing Ass'n of Central Iowa*, 539 U.S. ___, 123 S. Ct. 2156 (2003), this Court very recently stressed that the rational basis standard of review "is especially deferential in the context of classifications made by complex tax laws." *See Fitzgerald*, 539 U.S. at ____, 123 S. Ct. at 2160 ("In the context of an equal protection claim, the burden is imposed on plaintiffs to negative every conceivable basis that might support different treatment."); *see also Nordlinger*, 505 U.S. at 11, 112 S. Ct. at 2332. In *Fitzgerald*, the Court held:

> [T]he Constitution grants legislators, not courts, broad authority (within the bounds of rationality) to decide whom they wish to help with their tax laws and how much help those laws ought to provide. The task of classifying persons for benefits inevitably requires that some persons who have an almost equally strong claim to favored treatment be placed on different sides of the line, and **the fact the line might have been drawn differently at some points is a matter for legislative, rather than judicial, consideration**.

Fitzgerald, 539 U.S. at ___, 123 S. Ct. at 2160 (emphasis added).

The Court thus upheld a tax law that taxed revenues from slot machines at racetracks at a higher rate than revenues from slot machines on river boats.

The tax system that this Court upheld in *Nordlinger* is almost identical to the Homestead Freeze. Both systems promote neighborhood "preservation, continuity, and

stability" by protecting homeowners from being forced out of neighborhoods by inflationary property tax increases. Georgia's Supreme Court thus correctly held that "the record in this case establishes that the very same policies identified in *Nordlinger* underlie the acquisition-value taxation scheme authorized by the Homestead Freeze." *Columbus-Muscogee County Consol. Gov't,* 276 Ga. at 335, 579 S.E.2d at 203 (Ga. 2003). Because the Homestead Freeze "was enacted precisely to achieve the benefits of an acquisition-value system," the Georgia Supreme Court held that "the Homestead Freeze . . . is not unconstitutional under a rational relationship equal protection analysis. . . . " *Id.* at 336, 579 S.E.2d at 203.

(b) The Court Below Correctly Distinguished Allegheny.

Allegheny is factually distinguishable from both *Nordlinger* and this case. In *Allegheny*, the Webster County, West Virginia, tax assessor unilaterally and without voter mandate fixed annual assessments for property at 50% of the appraised value. *See Allegheny*, 488 U.S. at 338, 109 S. Ct. at 635. The "appraised value" under the system equaled the price for which the property was last sold. Because of increasing land values, property that changed hands typically was assessed at higher rates than property that had not been sold. *See id.* at 338, 109 S. Ct. at 635.

In rejecting this tax system, the Court emphasized the fact that the Webster County Tax Assessor "apparently on her own initiative" created the challenged assessment system in contravention of the West Virginia Constitution and state laws that required property to be taxed uniformly "according to its estimated market value." *Id.* at

345, 109 S. Ct. at 638. In a footnote critical to understanding this Court's analysis, the Court stated that "[w]e *need not and do not* decide today whether the Webster County assessment would stand on a different footing if it were the law of a State . . . instead of the *aberrational enforcement policy* it appears to be." *Id.* at 344 n.4, 109 S. Ct. at 638 n.4 (emphasis added). Thus, this Court has distinguished between two kinds of tax systems: those that are based on the decisions of administrative officials, like the one at issue in *Allegheny*, and those that are based on state law. As an example of a system based on state law, the Court specifically cited California Proposition 13. *See id.* This Court explicitly left open the question whether a state law that froze property values like Proposition 13 – as opposed to an administrative official's decision like the one at issue in *Allegheny* – would violate equal protection. *See id.*

The Court answered the question three years later when it upheld Proposition 13 in *Nordlinger*. According to the Court in *Nordlinger*, *Allegheny* did not control its analysis of Proposition 13 because *Allegheny* presented "the *rare* case where the facts *precluded any plausible inference* that the reason for the unequal assessment practice was to *achieve the benefits of an acquisition-value tax scheme*." *Nordlinger*, 505 U.S. at 16, 112 S. Ct. at 2335 (emphasis added).[4]

Allegheny's limited holding thus offers no support for Petitioners' equal protection claim. As this Court noted in

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[4] In correctly distinguishing *Allegheny*, the Georgia Supreme Court cited this very language. (*See* Petition app. at 7a.)

Nordlinger, the *Allegheny* tax system was adopted unilaterally by a single official, with no evidence that her goal was to give taxpayers the benefits of an acquisition-value based assessment system. Proposition 13 and the Homestead Freeze, on the other hand, involved legislative discretion and were enacted precisely to achieve the benefits of an acquisition-value tax scheme, a rational basis for the policies. *See id.* at 17, 112 S. Ct. at 2335. The court below therefore did not err when it held that *Allegheny* does not control in this case.

(c) Proposition 13 Is Indistinguishable from the Homestead Freeze.

Petitioners go to elaborate lengths to distinguish the Homestead Freeze from Proposition 13 because they know their claims must fail under *Nordlinger*. Petitioners present no convincing argument as to why *Nordlinger* does not control this Court's analysis. Upon careful review, it is apparent that *Nordlinger* rather than *Allegheny* applies.

First, Petitioners suggest that *Nordlinger* is distinguishable from this case because *Nordlinger* involved a statewide constitutional provision, as opposed to a local one.[5] (*See* Petition at 27.) Nowhere in *Nordlinger* does the Court make such a distinction. To contend that *Nordlinger* is limited to cases involving laws of statewide application is to ignore the import of the decision. As the court below

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[5] Petitioners are quick to emphasize that the Homestead Freeze affects only Columbus-Muscogee homeowners; however, precisely because of that limited application, this case does not raise an issue of national importance, and it does not merit certiorari. *See* Section II.A.4, *supra*.

correctly held, Proposition 13's statewide effect is not critical to applying *Nordlinger* in this case. (*See* Petition app. at 7a-8a.) In *Nordlinger*, this Court focused not on Proposition 13's statewide effect but on whether the "legislature" or "governing decision maker" had a rational basis for Proposition 13's tax classifications and whether those classifications furthered the government's goal. *Nordlinger*, 505 U.S. at 15, 112 S. Ct. at 2334. Furthermore, because the Amendment was approved by a two-thirds majority of both chambers of Georgia's General Assembly, as was required of all constitutional amendments, and voted on by the affected citizens, it is more akin to Proposition 13 than to the decision of the rogue administrative official in *Allegheny*.

Second, Petitioners suggest that Proposition 13 survived in *Nordlinger* because it served the state's interest in controlling inflation and providing predictability in the amount of taxation by providing for a 1% cap on the tax rate. (*See* Petition at 27-28.) This is, of course, exactly the purpose and end result of the Homestead Freeze. Petitioners incorrectly suggest that Respondents have the unfettered ability to raise taxes by increasing the millage rate. (*See id.* at 28.) Tax numbers do not support this argument. The millage rate in Columbus has increased only five mills over twenty years, which indicates (1) that Columbus has taken an extremely conservative approach to millage rate increases and (2) that Columbus has been able to manage its government without the need for

significant increases.[6] (*See* Petition app. at 53a-55a.) Columbus-Muscogee County residents have enjoyed remarkable stability, which allows homeowners to estimate their future tax burdens with confidence. The Homestead Freeze achieves the same stability that Proposition 13 affords California taxpayers.

Third, Petitioners incorrectly argue that "the Supreme Court's approval in *Nordlinger* of a taxation system that actually furthered the state's interest in protecting against inflation does not justify a scheme that only serves to impose an ever increasing portion of the County's tax burden on newcomers and renters." (Petition at 28.) Although it may be true that "newer" homeowners shoulder more of the tax burden than "older" homeowners initially, Proposition 13 had exactly the same effect. This Court noted that after eleven years under Proposition 13, the 44% of California homeowners who owned their homes at the time Proposition 13 was enacted "shouldered only 25% of the more than $4 billion in residential property taxes paid by homeowners statewide." *Nordlinger*, 505 U.S. at 6, 112 S. Ct. at 2329. This Court further noted that this burden on newcomers would continue to grow if property values continued to rise more than the annual 2% inflationary cap. *See id.* This Court nonetheless held these inequities did not violate equal protection because

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[6] The power to increase the millage rate is limited by law and the political system. Georgia's Taxpayer Bill of Rights specifically provides the mechanism for homeowners to receive notice of possible changes in the millage rate. *See* 1999 Ga. Laws 1043 (Respondents' app. at 21a-23a.) If the people oppose a change in the millage rate, they can express their opposition in mandatory public hearings and ultimately at the ballot box. This check on the government's power to raise the millage rate further ensures stability.

Proposition 13 served the state's interest in protecting homeowners from inflation. *Nordlinger*, 505 U.S. at 16-17, 112 S. Ct. at 2335, 2336. The Homestead Freeze serves the same purpose, and it was enacted for this very reason, to protect against "rampant inflation." (*See* Respondents' app. at 24a.) If Proposition 13 does not violate equal protection, neither does the Homestead Freeze.

Finally, Petitioners suggest that *Nordlinger* does not control because Proposition 13 did not provide for an "inflation adjustment" like the one Petitioners claim is provided by the 1980 Homestead Exemption. (*See* Petition at 28.) Petitioners' argument is a red herring; the 1980 Homestead Exemption upon which they rely has not existed in Columbus-Muscogee County since 1992, when it was replaced by a standard $13,500 exemption.

Laws like the Homestead Freeze do not violate equal protection "so long as there is a plausible policy reason for their classification." *Nordlinger*, 505 U.S. at 11, 112 S. Ct. at 2332. The Consolidated Government had a legitimate interest in ensuring stability and easing the inflationary burden on its taxpayers, particularly low-income taxpayers and the elderly on fixed incomes. Courts have held repeatedly that the protection of elderly and low-income residents is a legitimate government goal. *See, e.g., Kraebel v. New York City Dep't of Hous. Pres. and Dev.*, 959 F.2d 395, 401-02 (2d Cir. 1992); *Silberman v. Biderman*, 735 F. Supp. 1138, 1147-48 (E.D.N.Y. 1990); *Metrolina Family Practice Group v. Sullivan*, 767 F. Supp. 1314, 1321-22 (W.D.N.C. 1989). The Homestead Freeze is rationally related to this goal because it gives the most vulnerable Columbus-Muscogee taxpayers the certainty they need to plan their economic future by knowing what their property tax liability will be from year to year. Significantly, Petitioners nowhere suggest that this is not a legitimate purpose for legislation.

This Court has concluded that "[w]e need not cast about for reasons for the legislative judgment. We are not required to be sure of the precise reasons for its exercise or be convinced of the wisdom of its exercise." *Bunting v. Oregon*, 243 U.S. 426, 438, 37 S. Ct. 435, 437 (1917). As the Court noted in *Nordlinger*:

> California's grand experiment appears to vest benefits in a broad, powerful, and entrenched segment of society, and . . . ordinary democratic processes may be unlikely to prompt its reconsideration or repeal. **Yet many wise and well-intentioned laws suffer from the same malady.** [Proposition 13] is not palpably arbitrary, and we must decline petitioner's request to upset the will of the people of California.

Nordlinger, 505 U.S. at 18, 112 S. Ct. at 2336 (emphasis added).

The Homestead Freeze need not be perfect. It must only be rational. Under *Nordlinger*, the Homestead Freeze clearly survives this rational basis test.

3. The Decision of the Court Below Does Not Conflict with Other State Court Decisions.

Having failed to show that the decision below conflicts with the decisions of this Court, Petitioners next contend that this case merits review because of "a split in state court decisions following *Nordlinger*." (Petition at 29.) Petitioners argue that the decision below conflicts with *Roosevelt v. Montana Department of Revenue,* 293 Mont. 240, 975 P.2d 295 (Mont. 1999). (*See id).* Any appearance of conflict between these two cases is illusory.

In *Roosevelt*, the Supreme Court of Montana held that Montana's state property tax valuation system violated equal protection. *See Roosevelt*, 293 Mont. at 252, 975 P.2d at 303. Under Montana's statutory scheme, all real property was re-valued as of December 31, 1996. *See id.* at 245, 975 P.2d at 299. However, to avoid imposing hardship on property owners whose property had appreciated since it was last appraised, the legislature adopted a "phase-in provision" that allowed any change in value to be "phased in each year at the rate of 2% of the total change in valuation." *See id.* at 246, 975 P.2d at 299. The system, however, ultimately created increases in property taxes for those whose property declined in value. For example, the *Roosevelt* plaintiff's property value declined from $890,850 in 1996 to $701,890 in 1997. *See id.* at 243, 975 P.2d at 298. Yet, he received a credit of only two percent of the change in value and thus paid taxes based on 124% of the property's 1997 fair market value. *See id.* at 244, 975 P.2d at 298.

Accordingly, Montana's property tax scheme is wholly distinguishable from both Proposition 13 and the Homestead Freeze, and *Roosevelt* does not conflict with either the decision below or *Nordlinger*. As the court in *Roosevelt* clearly explained, unlike California or Columbus-Muscogee, "Montana does not have an 'acquisition value' system of taxation." *See id.* at 251, 975 P.2d at 302. Even the Montana court found that "acquisition value" systems like Proposition 13 (and hence the Homestead Freeze) are distinguishable. *See id. Roosevelt* therefore does not conflict with the decision below, and it does not alter the analysis in this case.

4. This Case Does Not Present an Issue of National Importance.

Petitioners significantly overstate the impact of the decision below. It will not, as they claim, "wreak havoc with tax and other legal regimes throughout the nation." (Petition at 8.) This case involves a local amendment to Georgia's constitution that affects only one of the state's 159 counties. Moreover, the issue is not likely to recur even in Georgia because the local constitutional amendment process under which it was promulgated is now defunct. Other Georgia counties cannot promulgate new local amendments to Georgia's constitution to create similar property-tax systems.

In addition, the decision below is unlikely to affect challenges to acquisition-based property tax systems in other states. While other states have implemented acquisition-value based property tax systems, any future equal protection challenges to those systems will be governed by this Court's seasoned analysis in *Nordlinger*. In short, this case's effects are not nearly as far-reaching as Petitioners contend.

B. The Process for Repealing a Local Amendment to Georgia's Constitution Does Not Violate Equal Protection.

Petitioners contend that by imposing more stringent standards for repealing a local amendment to the Georgia Constitution ("LCA") than were required for continuing it, the Georgia Constitution violates the Equal Protection Clause. This issue, however, was never raised below, misapplies the relevant Georgia constitutional provisions,

lacks legal merit, and uniquely applies to Columbus-Muscogee County. Further, as noted above, the issue is unlikely to recur, and there is no precedential value in deciding it.

Petitioners did not raise this issue below; they raise it for the first time before this Court. Before both the Supreme Court of Georgia and the trial court, Petitioners argued only that the Amendment is not of "equal dignity" with other provisions of the Georgia Constitution. Consequently, they argued, the Amendment cannot survive in the face of other Georgia Constitution provisions with which it allegedly conflicts. This argument is founded upon *state* constitutional law. Petitioners never raised any disparities in the process for enacting, continuing, and repealing LCAs, and they certainly did not allege a violation of the U.S. Constitution that would necessitate heightened scrutiny, as they now claim. Because Petitioners raise this issue for the first time before this Court, the Court should decline to consider it. *See, e.g., Adarand Constructors, Inc. v. Mineta*, 534 U.S. 103, 109, 122 S. Ct. 511, 513-14 (2001) ("In *Adarand I*, we said that application of our strict scrutiny standard 'should be addressed in the first instance by the lower courts.'"); *NCAA v. Smith*, 525 U.S. 459, 470, 119 S. Ct. 924, 938-939 (1999) ("[W]e do not decide in the first instance issues not decided below.").

Petitioners' argument also misapplies the relevant provisions of the Georgia Constitution. Petitioners argue that because repeal of the Amendment requires passage of a local bill by a majority of both chambers of the Georgia General Assembly plus a referendum in which a majority of Columbus-Muscogee County voters must approve repeal, but continuation of the Amendment after 1987 required only passage of a local bill, opponents of the Amendment are disadvantaged politically. Petitioners are

incorrect for several reasons. First, the requirement that LCAs be continued beyond 1987 by affirmative act did not disadvantage Petitioners. It actually provided them and fellow opponents of the Amendment with an *added* opportunity for repeal of the Amendment, one that the Georgia Constitution did not have to provide. In fact, in contrast to the continuation requirement in the 1983 Constitution, both the Georgia Constitutions of 1945 and 1976 (the two state constitutions prior to the current one that became effective in 1983) automatically continued all previously enacted LCAs, without requiring any affirmative act whatsoever to continue them in force. *See* GA. CONST. of 1976, art. XIII, § 1, ¶ 2 (Respondents' app. at 32a); GA. CONST. of 1945, art. VII, § 10, ¶ 1 (Respondents' app. at 29a). Contrary to the impression created by the Petition, the LCA continuation requirement in the 1983 Constitution did not disadvantage opponents of the Amendment. In fact, it provided opponents an additional opportunity to pursue repeal.

Second, the relevant issue is not what was required to continue an LCA as compared with what is required to repeal one. The relevant issue is what was required to pass the Amendment in the first place compared to what it would take to repeal it. Enactment of the Amendment in 1982 required passage of a constitutional amendment by two-thirds of both chambers of the General Assembly plus referendum approval by a majority of the voters of Columbus-Muscogee County. *See* GA. CONST. of 1976, art. XII, § 1, ¶ 1 (Respondents' app. at 30a). Repeal of the Amendment today similarly would require passage of a local bill by a majority of both chambers of the General Assembly plus referendum approval by a majority of the voters of Columbus-Muscogee County. *See* GA. CONST. art.

XI, § 1, ¶ 4(b) (Respondents' app. at 27a). To the extent any slight discrepancy exists between the form of enactment and repeal (two-thirds support in both chambers of the state legislature was required for enactment in 1982, while only majority support in both chambers is required for repeal today), Petitioners illustrate no harm. Indeed, Petitioners benefit because it would be slightly easier for them to obtain repeal than it was for the Amendment's supporters to achieve enactment.

Even if Petitioners' characterizations of the relevant Georgia constitutional provisions were correct, their legal argument nonetheless lacks merit based on this Court's precedent. Petitioners cite a number of voting rights cases involving disenfranchisement, "population variations in electoral districts, [] *Reynolds v. Sims*, 377 U.S. 533 (1964)," "the possibility that ballots might be treated differently during a recount[,] *Bush v. Gore*, 531 U.S. 98 (2000)," and "ballot access" limits on write-in votes and new political parties seeking to offer a candidate. (Petition at 10.) This case, however, involves none of these issues. There are no allegations of electoral malapportionment, difficulties in reviewing ballots, electoral disenfranchisement, or other limits to ballot access. Indeed, two referenda have been held on the Amendment – one in 1982 regarding whether to enact it and the other in 1991 regarding whether to keep it. In both referenda, Petitioners and other opponents were permitted to voice their views on the issue, mobilize support, and ultimately to vote, as the many news articles cited in the Petition's appendix show. (*See* Petition app. at 37a-40a.) Petitioners have suffered no restriction on access to the democratic process. They may be dissatisfied with the outcome of the

democratic process, but they have not been denied participation in it.

Petitioners also cite *Hunter v. Erickson*, 393 U.S. 385, 89 S. Ct. 557 (1969), in stating that identifiable minorities cannot be targeted and intimating that they fall within this category. If Petitioners were targeted based on a suspect classification, able counsel would have raised the issue long before this Petition in order to trigger a strict scrutiny analysis by the trial court and the Georgia Supreme Court. Their failure to do so should put the merits of any such argument to rest.

Finally, as Petitioners themselves emphasize, the Amendment in this case is unique to Columbus-Muscogee County. The Georgia Constitution that was ratified in 1983 and currently is in effect changed Georgia government such that existing LCAs can continue, but new ones cannot be enacted. Consequently, Petitioners ask this Court to overturn a product of an anachronistic procedure of prior Georgia Constitutions, on an issue that applies to only one county and that will not likely recur.

C. The Georgia Constitution Does Not Violate Equal Protection by Denying Columbus-Muscogee County Residents Rights Provided to Other Georgia Citizens.

Petitioners contend that the Amendment denies Columbus-Muscogee County residents and other Georgia residents similar tax treatment and therefore violates equal protection. As support, Petitioners cite only *Bush v. Gore*, 531 U.S. 98, 121 S. Ct. 525 (2000), in which this Court held that, in the context of recounting voting ballots, "[w]hen a court orders a statewide remedy, there must be

at least some assurance that the rudimentary requirements of equal treatment and fundamental fairness are satisfied." *Bush*, 531 U.S. at 109, 121 S. Ct. at 532. The facts in *Bush* are not analogous to this case. Unlike the ballot recount at issue in *Bush*, the Columbus-Muscogee County Homestead Freeze referenda do not have statewide ramifications. They did not affect the one-quarter mill that must be provided to the State of Georgia each year for state operations, which is collected based on fair market value instead of the acquisition-value. *See* GA. CONST. art. VII, § 1, ¶ 2(a) (Respondents' app. at 26a); O.C.G.A. § 48-5-8. The Homestead Freeze affects only Columbus-Muscogee County's local government operations; it has no impact whatsoever on the State of Georgia or on other cities or counties. More importantly, Petitioners ignore longstanding precedent of this Court that tax classifications are analyzed on whether a rational relationship to a legitimate end of government exists and are entitled to great deference. *See Fitzgerald*, 539 U.S. at ____, 123 S. Ct. at 2160.

Petitioners also ignore that numerous other LCAs have been continued since the 1983 Georgia Constitution was ratified, some related to taxation (e.g., homestead exemptions, exemptions for capital improvements, and creation of enterprise zones) and some related to other vital local government services. *See* 1983 Ga. Laws 5191 (Respondents' app. at 8a) (establishing county homestead exemptions); 1983 Ga. Laws 5201 (Respondents' app. at 9a) (exempting from county taxation increases in residential or commercial property values resulting from capital improvements); 1983 Ga. Laws 5203 (Respondents' app. at 10a) (establishing enterprise zones in DeKalb and Fulton counties). These LCAs have reflected a desire of the State

of Georgia to allow its local governments to serve as their own "laboratories of democracy" and develop solutions to what they perceive as their own local problems. Moreover, without the continuation of LCAs, the Georgia Constitution ratified in 1983 may have been altogether different or possibly may not even have been adopted. Petitioners nevertheless ask this Court to intrude into this state realm and scrutinize both an amendment process that existed in Georgia for 105 years and the political compromise that resulted in passage of the Georgia Constitution of 1983, now in effect for twenty years.

D. Petitioners' Privileges And Immunities Clause Argument Must Be Disregarded Because It Was Not Raised Below.

For the first time since this case was filed on August 16, 2000, Petitioners advance a Privileges and Immunities Clause claim, distinct from their right to travel claim. Petitioners claim that the Homestead Freeze burdens "several rights protected by the Privileges and Immunities Clause, including the right to equal treatment in the imposition of taxes . . . the right of outsiders to establish residency in Muscogee County . . . and the right of outsiders to purchase a home in Muscogee County." (Petition at 19 (citations omitted).) These arguments do not appear in any of Petitioners' pleadings or briefs below. It is well-settled that because these arguments were not raised in either the trial court or the Supreme Court of Georgia, they cannot be considered properly now. *See NCAA v. Smith*, 525 U.S. 459, 470, 119 S. Ct. 924, 938-939 (1999) (citing *Roberts v. Galen of Virginia*, 525 U.S. 249, 119

S. Ct. 685 (1999); *United States v. Bestfoods*, 524 U.S. 51, 118 S. Ct. 1876 (1998)).

E. The Homestead Freeze Does Not Violate the Right to Travel.

1. Petitioners' Claim is Not Justiciable.

Petitioners claim that the Homestead Freeze violates the right to travel by allegedly classifying residents differently based on when they moved into the County. Yet, Petitioners who did not move into Columbus-Muscogee from out-of-state do not have standing to bring this claim. *See Nordlinger*, 505 U.S. at 10-11, 112 S. Ct. at 2332 (holding that Stephanie Nordlinger had no standing to bring right to travel claim because she lived in California prior to buying her home and could not show that Proposition 13 had kept her from traveling or settling there). Only two of the Petitioners, Ron and Faye Sherrill, moved from out-of-state and purchased a home in Columbus-Muscogee. (*See* Petition at 25.) Even if the Sherrills have standing, however, their right to travel claim is not ripe because they did not exhaust their administrative remedies before filing this suit, as Georgia law requires. *See North Fulton Comm. Hosp. v. State Health Planning & Dev. Agency*, 168 Ga. App. 801, 805, 310 S.E.2d 764, 767 (1983) (refusing to consider constitutional challenge of administrative decision because plaintiff first raised constitutional arguments before trial court rather than the administrative agency); *Sparks v. Caldwell*, 244 Ga. 530, 261 S.E.2d 590 (1979) (refusing to consider constitutional attack on state law because plaintiff had failed to exhaust his administrative remedies); (Petition app. at 69a (noting that only Petitioner Kenneth Henson, Jr. filed an administrative appeal

with the Board of Tax Assessors).) Thus, Petitioners' right to travel claim is not justiciable.

2. The Homestead Freeze Does Not Violate the Right to Travel.

Even if this Court finds that Petitioners have standing to bring a right to travel claim and that any such claim is ripe for adjudication, Petitioners have conceded that no case directly supports their position that an acquisition-value assessment system infringes Petitioners' right to travel. (*See* Respondents' app. at 3a.) In their brief before the trial court, Petitioners also conceded that their right to travel claim was not sufficient to invalidate the Homestead Freeze. (*See* Respondents' app. at 37a n.1.)

The right to travel is not mentioned in the text of the Constitution of the United States. Nevertheless, the right to move freely *from state to state* is "firmly embedded in our jurisprudence." *Saenz v. Roe*, 526 U.S. 489, 498, 119 S. Ct. 1518, 1524 (1999). The Constitution gives U.S. citizens the right to travel *among* the states, not *within* a state. In short, it protects *interstate* travel, not *intrastate* travel. In one case cited by the Petitioners, *Memorial Hospital v. Maricopa County*, 415 U.S. 250, 94 S. Ct. 1076 (1974), this Court held that "[t]he right of *interstate* travel has repeatedly been recognized as a basic constitutional freedom." *Id.* at 254, 94 S. Ct. at 1080 (emphasis added). This interstate travel limitation was adhered to again in *Attorney General of New York v. Soto-Lopez*, 476 U.S. 898, 106 S. Ct. 2317 (1986). Those who seek to become permanent residents of a state have the right only to be treated

like the state's other citizens. *See Saenz*, 526 U.S. at 500, 119 S. Ct. at 1525.

Lacking precedent, Petitioners rely heavily on *Zobel v. Williams*, 457 U.S. 55, 102 S. Ct. 2309 (1982), to support their right to travel argument. *Zobel*, however, is distinguishable and does not control this case. In *Zobel*, this Court struck down an Alaska law that distributed to adult citizens dividends from a public fund of state oil revenues. *Zobel*, 457 U.S. at 56, 102 S. Ct. at 2310. The amount that each adult received from the fund was based exclusively on the length of each citizen's residence. *See id.* The Court struck down the statute after finding that "the State's interest [was] not in any way served by granting greater dividends to persons for their residency. . . ." *Id.* at 62, 102 S. Ct. at 2313.

Zobel is distinguishable because the Homestead Freeze does not impose a durational residency requirement. It applies immediately. *Zobel* also is distinguishable from this case because Columbus-Muscogee County had a legitimate purpose when it enacted the Homestead Freeze: to protect citizens from ever-increasing property taxes. (*See* Respondents' app. at 24a.) The Supreme Court in *Nordlinger* held that this purpose, protecting from inflation those with a reliance interest in the value of their property, is legitimate. *See Nordlinger*, 505 U.S. at 12-13, 112 S. Ct. at 2332, 2333. Further, the Council Resolution in which the Homestead Freeze first was approved states explicitly that it was proposed to protect homeowners from "higher property assessments brought about by rampant inflation." (Respondents' app. at 24a.) The Homestead Freeze was not enacted as a way to allocate public resources among its citizens, as was the situation with the statute in *Zobel*. It was not enacted to reward long-time

Columbus-Muscogee County residents, as the statute in *Zobel* sought to do. The Homestead Freeze is factually different, and its purpose was to protect citizens from inflation. *Zobel* does not control here because the Homestead Freeze's purpose is more sound constitutionally than the purpose of the measure enacted by Alaska's legislature.

Petitioners argue that those who move into Muscogee County from out-of-state must pay higher taxes than do current Muscogee County residents. (*See* Petition at 21.) The Homestead Freeze, however, applies to *all* new homeowners – including those who lived in Columbus-Muscogee County or other parts of Georgia before they purchased their Columbus-Muscogee County homes. Petitioners seek to avoid the conclusion that the Homestead Freeze draws no distinction between "in-county" home buyers, "in-state" home buyers, and "out-of-state" home buyers by citing *Memorial Hospital v. Maricopa County*, 415 U.S. 250, 94 S. Ct. 1076 (1974). That case, however, is inapplicable here because it involves a clear durational residency requirement. In *Maricopa County*, the statute at issue required residents to live in the defendant county for one year before they were eligible to receive indigent hospital care. *See Maricopa County*, 415 U.S. at 252, 94 S. Ct. at 1079.

The Georgia Supreme Court correctly concluded that the Homestead Freeze imposes no such artificial "waiting period." *See Columbus-Muscogee County Consol. Gov't v. CM Tax Equalization Found., Inc.*, 276 Ga. 332, 338, 579 S.E.2d 200, 205 (2003). Unlike the statute at issue in *Maricopa County*, nothing in the Resolution or the Homestead Freeze refers to any time period whatsoever. *Compare Maricopa County,* 415 U.S. at 252, 94 S. Ct. at 1079, *with* 1981 Ga. Laws 1926 (Respondents' app. at 5a).

Moreover, the Homestead Freeze does not prevent a person from out-of-state who moves to Columbus-Muscogee from buying a house for a certain time. A newcomer can buy a house and therefore become a beneficiary of the Homestead Freeze on the very day he or she arrives in Georgia if he or she so chooses. The Homestead Freeze has no durational residency requirement, and *Maricopa County* does not apply.

A Macon, Georgia resident who moves to Columbus and buys a house is unquestionably on equal footing with a new homeowner who moves from Connecticut. Even more compelling, a Columbus-Muscogee resident who moves from one neighborhood in Columbus-Muscogee County to another, or who buys a house for the first time, is in the same position as the new Columbus homeowner who moves from Connecticut. Because the Homestead Freeze does not treat new Columbus-Muscogee residents who move from *out-of-state* differently than those who move from other parts of Georgia – or indeed from within Columbus-Muscogee – it does not violate Petitioners' right to interstate travel. *See Attorney Gen. of New York v. Soto-Lopez*, 476 U.S. 898, 904, 106 S. Ct. 2317 (1986).

III. CONCLUSION

For the foregoing reasons, Respondents ask this Court to deny the Petition for a Writ of Certiorari in this case.

Respectfully submitted,

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APPENDIX A – EXCERPTS FROM TRANSCRIPT OF PROCEEDINGS BEFORE HON. GEORGE M. PEAGLER, SUPERIOR COURT OF MUSCOGEE COUNTY, MARCH 14, 2001

**IN THE SUPERIOR COURT
OF MUSCOGEE COUNTY
STATE OF GEORGIA**

CM TAX EQUALIZATION FOUNDATION, INC.; HULLETE BOOTH; WILLIAM FEIGHNER; TERRELL GREEN; BETTIE RUTH HAYNES; MOSES HAYNES; KENNETH HENSON, JR.; EARLE F. LASSETER; SALLY BORK LASSETER; LISA D. MCNARRY; FAYE SHERRILL; RON SHERRILL; TED SHORT; PENNY SHORT; CARL J. THOMAS; CONNIE GRAY THOMAS; ERNESTINE WELLS; RICHARD WELLS; WILL WHITE; AMY WHITE; CHRISTOPHER WIGHTMAN; and ASTRID WIGHTMAN; Plaintiffs, V. COLUMBUS-MUSCOGEE COUNTY CONSOLIDATED GOVERNMENT; MUSCOGEE COUNTY BOARD OF TAX ASSESSORS; LULA LUNSFORD HUFF, in her official capacity as Tax Commissioner, Muscogee County; and MUSCOGEE COUNTY BOARD OF EQUALIZATION; Defendants.	CIVIL ACTION NO.: SU-2000-CV-3256

MARCH 14, 2002
HON. GEORGE M. PEAGLER, JR., PRESIDING
SUMTER COUNTY COURTHOUSE
AMERICUS, GEORGIA

BRENDA C. BROWN, CCR

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[. . .]

[87] MS. ROSEBOROUGH: It doesn't make sense to give rights and benefits to a gentrified class based on their tenure within the county.

Likewise, Your Honor, that is the very thing that the Supreme Court has held violates the right to travel. The giving of benefits to a particular group based on their longevity in the state, likewise their longevity in the county, violates the Due Process Clause and the right to travel.

THE COURT: You agree that this is a case of first impression in Georgia –

MS. ROSEBOROUGH: Yes, sir.

THE COURT: – dealing with this particular issue?

MS. ROSEBOROUGH: Yes, Your Honor. I do.

THE COURT: Okay. Are there any cases from outside of the jurisdiction that seem to give any [88] guidance?

MS. ROSEBOROUGH: Just the Supreme Court cases that talk about the impact of providing a benefit to people based on their tenure in the state. You'd have to analogize for that the case of giving of benefit to people based on their tenure in the county or the tenure of their home ownership in the county, and there really aren't

cases directly on point, but the principle on those cases applies. And when you seek to create a class of people based on the date on which they acquire citizenship, based on the date on which they move to particular state, based on the date they move to a particular county or based on the date they became homeowners –

THE COURT: Do you have a standing issue here inasmuch as none of your Plaintiffs are in the position to be out-of-state residents looking at moving into Muscogee County?

MS. ROSEBOROUGH: No, Your Honor. In *Nordlinger*, the Court found that Ms. Nordlinger didn't have standing to raise the right to travel issue because she had been a resident of the State of California for the entire time, both before and after Proposition 13 was passed.

In our case, our Plaintiff, Faye Sherrill – Ms. Sherrill's in the courtroom – migrated to the State of Georgia from Oklahoma. She was a resident of Oklahoma at [89] the time the freeze was passed and then moved to Muscogee County, so she is a person whose right to travel was burdened by the freeze which she confronted when she made a decision to move into Muscogee County.

THE COURT: Yet she chose to purchase property in Muscogee County, notwithstanding the freeze?

MS. ROSEBOROUGH: Right, but it doesn't matter that she decided to take on the constitutional burden or to live in Muscogee notwithstanding that unconstitutional burden. It only matters that she confronted it for purposes of her having standing to challenge it.

[. . .]

APPENDIX B – RELEVANT STATUTORY PROVISIONS

1981 Ga. Laws 1926

MUSCOGEE COUNTY – VALUATION OF HOMESTEAD PROPERTY

Proposed Amendment to the Constitution

No. 76 (House Resolution No. 271)

A RESOLUTION

Proposing an amendment to the Constitution so as to provide for the valuation of certain homestead property in Muscogee County for purposes of ad valorem taxation for school and consolidated city-county government purposes; to provide for other matters relative to the foregoing; to provide for the submission of this amendment for ratification or rejection; and for other purposes.

BE IT RESOLVED BY THE GENERAL ASSEMBLY OF GEORGIA

Section 1. Article VII, Section I, Paragraph III of the Constitution of the State of Georgia is hereby amended by adding at the end thereof the following paragraph:

"Subject to the conditions and limitations specified by law, homestead property in Muscogee County shall be valued for purposes of ad valorem taxation for school and city-county consolidated government purposes based upon the fair market value of the property as of January 1, 1983; or as of January 1 of the first year when homestead exemption is allowed and claimed after January 1, 1983; or as of January 1 of the year following the last change of ownership after January 1, 1983, whichever is later. The value of any improvements which are made after the base fair market value is established and which require a

building permit to be obtained shall be added to the established base fair market value. The provisions of this paragraph shall apply with respect to valuation of any homestead property only so long as the property is actually occupied by the owner primarily as a homestead and is claimed and qualifies for the homestead exemption allowed under Georgia law. As used in this paragraph, homestead shall have the meaning specified by law for purposes of exemption from taxation, except that the term shall include not more than two acres of land upon which the residence is located or which immediately surrounds the residence. For the purposes of this paragraph, any change of title between spouses shall not be considered a sale, purchase, or change of ownership. The assessed value of such homestead property for the purposes of taxation as specified in this paragraph shall be the value determined pursuant to this paragraph multiplied by the percentage specified by law for assessment of tangible property; provided, however, in case of error, or in case incorrect information is provided, the Board of Tax Assessors may make correction to the January 1, 1983; value; or the value on January 1 of the first year when homestead exemption was allowed and claimed after January 1, 1983; or the value on January 1 of the year following the last change of ownership after January 1, 1983, whichever is later. This paragraph shall not affect state taxation."

Section 2. The above proposed amendment to the Constitution shall be published and submitted as provided in Article XII, Section I, Paragraph I of the Constitution.

The ballot submitting the above proposed amendment shall have written or printed thereon the following:

"[ ] YES
[ ] NO

Shall the Constitution be amended so as to provide for assessment of homestead property in Muscogee County for ad valorem tax purposes based upon the value of the property on January 1, 1983; or as of January 1 of the first year when homestead exemption is allowed and claimed after January 1, 1983; or as of January 1 of the year following the last change of ownership after January 1, 1983, whichever is later?"

All persons desiring to vote in favor of ratifying the proposed amendment shall vote "Yes." All persons desiring to vote against ratifying the proposed amendment shall vote "No."

If such amendment shall be ratified as provided in said Paragraph of the Constitution, it shall become a part of the Constitution of this state.

1983 Ga. Laws 5191

RESULTS OF PROPOSED CONSTITUTIONAL AMENDMENTS

LOCAL CONSTITUTIONAL AMENDMENTS VOTED ON NOVEMBER 2, 1983

AMENDMENT NO. 6

APPLING COUNTY

City of Baxley

Yes 404 No 96

Shall the Constitution be amended so as to authorize a homestead exemption for residents of the City of Baxley in an amount to be fixed by the governing authority of the city at not more than $15,000.00 from all City of Baxley ad valorem taxes?

1983 Ga. Laws 5201

RESULTS OF PROPOSED CONSTITUTIONAL AMENDMENTS

LOCAL CONSTITUTIONAL AMENDMENTS VOTED ON NOVEMBER 2, 1983

DEKALB COUNTY AND FULTON COUNTY

Shall the Constitution be amended so as to exempt the increased value of property resulting from certain capital improvements of the Cabbage town Historic District economic reuse establishment and certain additions thereto from all City of Atlanta and Fulton County ad valorem property taxes, including ad valorem taxes for school purposes, for a period of seven years following their establishment or addition?

City of Atlanta
(DeKalb County)

Yes 1,847 No 1,236

Atlanta School Dist.
(DeKalb County)

Yes 1,847 No 1,236

Fulton County

Yes 40,896 No 39,843

City of Atlanta
(Fulton County)

Yes 25,658 No 20,757

Atlanta School Dist.
(Fulton County)

Yes 26,658 No 20,757

1983 Ga. Laws 5203

RESULTS OF PROPOSED CONSTITUTIONAL AMENDMENTS

LOCAL CONSTITUTIONAL AMENDMENTS VOTED ON NOVEMBER 2, 1983

DEKALB COUNTY AND FULTON COUNTY

Shall the Constitution be amended so as to authorize the General Assembly to provide by local law that exemptions from ad valorem taxation by Fulton County and the City of Atlanta for inventories of certain goods may apply within urban enterprise zones established by the governing body of the City of Atlanta?

City of Atlanta
(DeKalb County)

Yes 1,806 No 1,151

Atlanta School Dist.
(DeKalb County)

Yes 1,806 No 1,151

City of Atlanta
(Fulton County)

Yes 29,199 No 16,576

Atlanta School Dist.
(Fulton County)

Yes 29,199 No 17,576

Fulton County

Yes 46,025 No 34,274

1983 Ga. Laws 5210

RESULTS OF PROPOSED CONSTITUTIONAL AMENDMENTS

LOCAL CONSTITUTIONAL AMENDMENTS VOTED ON NOVEMBER 2, 1983

AMENDMENT NO. 6

MUSCOGEE COUNTY

Shall the Constitution be amended so as to provide for assessment of homestead property in Muscogee County for ad valorem tax purposes based upon the value of the property on January 1, 1983; or as of January 1 of the first year when homestead exemption is allowed and claimed after January 1, 1983; or as of January 1 of the year following the last change of ownership after January 1, 1983, whichever is later?

City of Atlanta
(DeKalb County)

Yes 19,513 No 7,143

(DeKalb County)

Yes 19,513 No 7,143

1986 Ga. Laws 3800

COLUMBUS, GEORGIA AND MUSCOGEE COUNTY VALUATION OF HOMESTEAD PROPERTY; LOCAL CONSTITUTIONAL AMENDMENT CONTINUED.

No. 835 (House Bill No. 527).

AN ACT

To continue in force and effect as a part of the Constitution of the State of Georgia that constitutional amendment duly ratified at the 1982 general election (Res. Act No. 76, House Resolution No. 271, Ga. L. 1981, p. 1926) and proclaimed by the Governor to be a part of the Constitution of the State of Georgia, providing for the valuation of certain homestead property of Muscogee County for purposes of ad valorem taxation for school and consolidated city-county government purposes; to provide the authority for this Act; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

Section 1. That constitutional amendment duly ratified at the 1982 general election (Res. Act No. 76, House Resolution No. 271, Ga. L. 1981, p. 1926) and proclaimed by the Governor to be a part of the Constitution of the State of Georgia, providing for the valuation of certain homestead property of Muscogee County for purposes of ad valorem taxation for school and consolidated city-county government purposes shall not be repealed or deleted on July 1, 1987, as a part of the Constitution of the State of Georgia but is specifically continued in force and effect on and after that date as a part of the Constitution of the State of Georgia.

Section 2. This Act is passed pursuant to Article XI, Section I, Paragraph IV of the Constitution of the State of Georgia which authorizes the continuation of certain amendments to the Constitution.

Section 3. All laws and parts of laws in conflict with this Act are repealed.

NOTICE OF INTENTION TO INTRODUCE LOCAL LEGISLATION

Notice is hereby given that there will be introduced at the regular 1985 session of the General Assembly of Georgia, a Bill to provide for the continuation in force and effect, as part of the Constitution ratified at the General Election in 1982, that constitutional amendment which was proposed by Resolution Act No. 76 (House Resolution No. 271) enacted at the 1981 session of the General Assembly and which was duly ratified at the 1982 general election (Ga. L. 1981, p. 1926) and which relates to the valuation of certain homestead property of Muscogee County for purposes of ad valorem taxation for school and consolidated city-county government purposes.

This the 8 day of January, 1985.

Thomas B. Buck, III
State Representative,
District 95
Pub. Jan. 8, 1985

Georgia, Fulton County.

Personally appeared before me, the undersigned authority, duly authorized to administer oaths, Thomas B. Buck, III, who, on oath, deposes and says that he is Representative from the 95th District, and that the attached

copy of Notice of Intention to Introduce Local Legislation was published in the Columbus Ledger which is the official organ of Muscogee County, on the following date: January 8, 1985.

/s/ Thomas B. Buck, III
State Representative,
District 95

Sworn to and subscribed before me,

this 14th day of January, 1985.

/s/ Cathy Ann Walls
Notary Public, Georgia State at Large.
My Commission Expires Dec. 18, 1988.
(Seal).

Approved March 18, 1986.

1991 Ga. Laws 4255

MUSCOGEE COUNTY - CITY-COUNTY GOVERNMENT AND SCHOOL TAXES; HOMESTEAD VALUATION; LOCAL CONSTITUTIONAL AMENDMENTS REPEALED; REFERENDUM.

No. 167 (House Bill No. 982).

AN ACT

To repeal an Act approved March 18, 1986 (Ga. L. 1986, p. 3800), which continued in force and effect as a part of the Constitution of the State of Georgia that constitutional amendment duly ratified at the 1982 general election (Res. Act No. 76, House Resolution No. 271, Ga. L. 1981, p. 1926) and proclaimed by the Governor to be a part of the Constitution of the State of Georgia providing for the valuation of certain homestead property of Muscogee County for purposes of ad valorem taxation for school and consolidated city-county government purposes; to repeal that constitutional amendment duly ratified at the 1982 general election (Res. Act No. 76, House Resolution No. 271, Ga. L. 1981, p. 1926) and proclaimed by the Governor to be a part of the Constitution of the State of Georgia providing for the valuation of certain homestead property of Muscogee County for purposes of ad valorem taxation for school and consolidated city-county government Purposes; to provide the authority for this Act; to provide for a referendum; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

Section 1. That Act approved March 18, 1986 (Ga. L. 1986, p. 3800), which continued in force and effect as a

part of the Constitution of the State of Georgia that constitutional amendment duly ratified at the 1982 general election (Res. Act No. 76, House Resolution No. 271, Ga. L. 1981, p. 1926) and proclaimed by the Governor to be a part of the Constitution of the State of Georgia providing for the valuation of certain homestead property of Muscogee County for purposes of ad valorem taxation for school and consolidated city-county government purposes is repealed in its entirety.

Section 2. That constitutional amendment duly ratified at the 1982 general election (Res. Act No. 76, House Resolution No. 271, Ga. L. 1981, p. 1926) and proclaimed by the Governor to be a part of the Constitution of the State of Georgia providing for: the valuation of certain homestead property of Muscogee County for purposes of ad valorem taxation for school and consolidated city-county government purposes and which was continued on and after July 1, 1987, as a part of the Constitution of the State of Georgia is repealed in its entirety.

Section 3. This Act is passed pursuant to Article XI, Section I, Paragraph IV(b) of the Constitution of the State of Georgia which authorizes the repeal of certain amendments to the Constitution which were continued in force and effect after July 1, 1987.

Section 4. As soon as is permissible and reasonably practicable under the federal Voting Rights Act of 1965, as amended, and under the general laws of this state, the election superintendent of Muscogee County shall call and conduct an election for the purpose of submitting this Act to the electors of Muscogee County and the Muscogee County School District for approval or rejection. The

superintendent shall cause the date and purpose of the election to be published once a week for two weeks immediately preceding the date thereof in the official organ of Muscogee County. The ballot shall have written or printed thereon the words:

"[ ] YES
[ ] NO

Shall the local constitutional amendment be repealed which provides for the assessment of certain homestead property of Muscogee County for ad valorem tax purposes so that after such repeal, homestead property in Muscogee County will be assessed for ad valorem tax purposes in the manner provided by the general laws of this state?"

All persons desiring to vote for approval of the Act shall vote "Yes," and those persons desiring to vote for rejection of the Act shall vote "No." If more than one-half of the votes cast on such question are for approval of Sections 1 through 3 of this Act, then Sections 1 through 3 of this Act shall become of full force and effect immediately and shall be applicable to all taxable years beginning on or after January 1 immediately following such election; otherwise this Act shall be void and of no force and effect and shall be automatically repealed upon the date the election results are certified under this section. In the event the election provided for in this section is not conducted on or before the date of the November, 1992, general election, this Act shall stand repealed in its entirety on December 31, 1992.

The expense of such election shall be borne by Muscogee County. It shall be the superintendent's duty to certify the result thereof to the Secretary of State.

Section 5. Except as otherwise provided in Section 4 of this Act, this Act shall become effective upon its approval by the Governor or upon its becoming law without such approval.

Section 6. All laws and parts of laws in conflict with this Act are repealed.

NOTICE OF INTENTION TO INTRODUCE LOCAL LEGISLATION

Notice is given that there will be introduced at the regular 1991 session of the General Assembly of Georgia, a bill to repeal an Act approved March 18, 1986 (Ga. L. 1986, p. 3800) which continued in force and effect as a part of the Constitution of the State of Georgia that constitutional amendment duly ratified at the 1980 general election (Res. Act No. 76, House Resolution No. 271, Ga. L. 1981, p. 1926) and proclaimed by the Governor to be a part of the Constitution of the State of Georgia, providing for the valuation of certain homestead property of Muscogee County for purposes of ad valorem taxation for school and consolidated city-county government purposes; to repeal that constitutional amendment duly ratified at the 1982 general election (Res. Act No. 76, House Resolution No. 271, Ga. L. 1981, p. 1926) and proclaimed by the Governor to be a part of the Constitution of the State of Georgia providing for the valuation of certain homestead property of Muscogee County for purposes of ad valorem taxation for school and consolidated city-county government purposes; to provide the authority for this Act; to provide for a

referendum, to repeal conflicting laws, and for other purposes.

This 28 day of February, 1991.

/s/ E.H. POLLEYS, JR.
City Attorney

GEORGIA, FULTON COUNTY.

Personally appeared before me, the undersigned authority, duly authorized to administer oaths, Thomas B. Buck, III, who, on oath, deposes and says that he is Representative from the 95th District, and that the attached copy of Notice of Intention to Introduce Local Legislation was published in the Columbus Ledger-Enquirer which is the official organ of Muscogee County, on the following date: March 1, 1991.

/s/ Thomas B. Buck, III
State Representative,
District 95

Sworn to and subscribed before me,
this 4th day of March, 1991.

/s/ Connie S. Guzzetti
Notary Public, Georgia State at Large.
My Commission Expires Oct. 26, 1993.
(Seal).

Approved April 4, 1991.

1992 Ga. Laws CCCLXXXVI

RESULTS OF REFERENDUM ELECTIONS

Georgia Laws, 1991:

County	Page No.	SUBJECT	Date of Election	Result
Muscogee	4255	City-County Government and School Taxes; Homestead Valuation; Local Constitutional Amendments Repealed; Referendum	11-5-91	Yes: 5,731 No: 24,247
Muscogee	4259	Homestead Exemption; Co unty and School District Taxes, Disabled Veterans, Terms and Conditions, Procedures; Applicability; Referendum	11-5-91	Yes: 25,203 No: 4,579
Muscogee	4265	Homestead Exemptions; County and School District Taxes, Procedures; Terms and Conditions; Applicability, Referendum	11-5-91	Yes: 27,198 No: 2,640
Newton	4328	Homestead Exemption, County & School District Taxes; Eligibility; Restrictions; Applicability; Referendum	Referendum Not Held	
Oconee	3822	School Superintendent, Appointment; Term; Contract	11-5-91	Yes: 795 No: 1,286
Pickens	3851	School District Homestead Exemption, Referendum	Referendum Not Held	
Pickens	4212	Board of Commissioners; Creation; Referendum	3-3-92	Yes: 1,377 No: 2,081
Pike	3695	School District; Homestead Exemption; Referendum	Referendum Not Held	
Pulaski	4175	Board District; Homestead Exemption; Referendum Board of Education; Consolidation and Restatement of Law, Members; Nonpartisan Election; Qualifications; Vacancies, Dates of Elections; Referendum . . .	Referendum Not Held	

1999 Ga. Laws 1043

REVENUE AND TAXATION – AD VALOREM TAXES; MILLAGE RATE DETERMINATIONS; CHANGES IN RETURNS; RECORDS; DISCLOSURES, APPEALS; PROCEDURES.

No. 431 (Senate Bill No. 177).

AN ACT

To amend Chapter 3 of Title 48 of the Official Code of Georgia Annotated, relating to ad valorem taxation of property, so as to provide for comprehensive procedures regarding the determination of certain millage rates; to provide for definitions; to provide for certification; to provide for the adoption of millage rates; to provide for the notice and public hearings; to provide for enforcement; to change certain provisions regarding notice of changes in ad valorem tax returns; to provide for notice of additional information, to provide availability of certain records and information; to provide for additional disclosure of information to taxpayers; to change certain provisions regarding review and appeal of assessments to provide for times to conduct appeal or arbitration proceedings; to provide for written notice of grounds for rejecting taxpayer's position; to change certain provisions regarding prima-facie correctness and burden of proof; to provide for recovery of litigation and attorney's fees under certain circumstances; to provide for audio recording of certain proceedings; to provide for powers, duties, and authority of the state revenue commissioner with respect to the foregoing; to provide for other matters relative to the foregoing; to provide for an effective date; to provide for applicability; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

[. . .]

(c)(1) Whenever a recommending authority or levying authority shall propose to adopt a millage rate which does not exceed the roll-back rate, it shall adopt that millage rate at an advertised public meeting and at a time and place which is convenient to the taxpayers of the taxing jurisdiction, in accordance with the procedures specified under Code Section 48-5-32.

(2) In those instances in which the recommending authority or levying authority proposes to establish any millage rate which would require increases beyond the roll-back rate, the recommending authority or levying authority shall advertise its intent to do so and shall conduct at least three public hearings thereon, at least one of which shall commence between the hours of 6:00 P.M. and 7:00 P.M., inclusive, on a business weekday. The recommending authority or levying authority shall place an advertisement in a newspaper of general circulation serving the residents of the unit of local government, which shall read as follows:

NOTICE OF PROPERTY TAX INCREASE

The (*name of recommending authority or levying authority*) has tentatively adopted a millage rate which will require an increase in property taxes by (*percentage increase over roll-back rate*) percent.

All concerned citizens are invited to the public hearing on this tax increase to be held at (*place of meeting*) on (*date and time*).

Simultaneously with this notice the recommending authority or levying authority shall provide a press release to the local media.

(3) The advertisement shall appear at least one week prior to each hearing and shall be prominently displayed and shall not be placed in that section of the newspaper where legal notices appear.

(4) No recommending authority shall recommend and no levying authority shall levy a millage rate in excess of the proposed millage rate as established pursuant to paragraph (2) of this subsection without beginning anew the procedures and hearings required by this Code section and those required by Code Section 48-5-32.

[. . .]

APPENDIX C – RESOLUTION OF THE COUNCIL OF COLUMBUS

A RESOLUTION

No. 667-80

WHEREAS, the rate of inflation in the past several years has continued at an increasingly excessive rate; and,

WHEREAS, the value of single family homeowner occupied property has generally increased at an even more rapid rate than the general inflation rate; and,

WHEREAS, values of homeowner occupied property are likely to continue to increase in the future at a rate exceeding the general inflation rate; and,

WHEREAS, it seems desirable to protect the homeowners of Muscogee County from a trend of increasingly higher property assessments brought about by rampant inflation, which has the potential of resulting in confiscatory taxation; and,

WHEREAS, it appears that an amendment to the Constitution of the State of Georgia is necessary to change the method of arriving at assessed values for homestead property in Muscogee County.

NOW, THEREFORE, THE COUNCIL OF COLUMBUS, GEORGIA HEREBY RESOLVES:

That this Council does hereby request the Columbus Delegation to the Georgia General Assembly to seek the passage of a Resolution of the General Assembly placing on the ballot before the people a proposed amendment to the Constitution of Georgia authorizing the assessment of homestead property in Muscogee County for ad valorem tax purposes based on the value of the property

on January 1, 1983; or on January 1, of the first year when homestead exemption is allowed and claimed after January 1, 1983; or on January 1 of the year following the last change of ownership after January 1, 1983, whichever is later.

Introduced and read at a regular meeting of the Council of Columbus, Georgia, held on the 23rd day of December, 1980 and adopted at said meeting by the affirmative vote of nine members of said Council.

Councilor Basset voting	*Absent for the vote*
Councilor Chester voting	*Yes.*
Councilor Henry voting	*Yes.*
Councilor Jernigan voting	*Yes.*
Councilor Kendrick voting	*Yes.*
Councilor Land voting	*Yes.*
Councilor McClung voting	*Absent.*
Councilor Rector voting	*Yes.*
Councilor Wells voting	*Yes.*
Councilor Wright voting	*Yes.*

/s/ _____
LEMUEL H. MILLER
CLERK

/s/ _____
HARRY C. JACKSON
MAYOR

APPENDIX D – RELEVANT CONSTITUTIONAL PROVISIONS

GA. CONST. art. VII, § 1, ¶ 2(a)

Taxing Power Limited.

The annual levy of state ad valorem taxes on tangible property for all purposes, except for defending the state in an emergency, shall not exceed one-fourth mill on each dollar of the assessed value of the property.

GA. CONST. art. X, § 1, ¶ 1

Proposals to Amend the Constitution; New Constitution.

Amendments to this Constitution or a new Constitution may be proposed by the General Assembly or by a constitutional convention, as provided in this article. Only amendments which are of general and uniform applicability throughout the state shall be proposed, passed, or submitted to the people.

GA. CONST. art. XI, § 1, ¶ 4

(a) The following amendments to the Constitutions of 1877, 1945, and 1976 shall continue in force and effect as part of this Constitution until July 1, 1987, at which time said amendments shall be repealed and shall be deleted as a part of this Constitution unless any such amendment shall be specifically continued in force and effect without amendment either by a local law enacted prior to July 1, 1987, with or without a referendum as provided by law, or by an ordinance or resolution duly

adopted prior to July 1, 1987, by the local governing authority in the manner provided for the adoption of home rule amendments to its charter or local Act: (1) amendments to the Constitution of 1877 and the Constitution of 1945 which were continued in force and effect as a part of the Constitution of 1976 pursuant to the provisions of Article XIII, Section I, Paragraph II of the Constitution of 1976 which are in force and effect on the effective date of this Constitution; (2) amendments to the Constitution of 1976 which were ratified as general amendments but which by their terms applied principally to a particular political subdivision or subdivisions which are in force and effect on the effective date of this Constitution; (3) amendments to the Constitution of 1976 which were ratified not as general amendments which are in force and effect on the effective date of this Constitution; and (4) amendments to the Constitution of 1976 of the type provided for in the immediately preceding two subparagraphs (2) and (3) of this Paragraph which were ratified at the same time this Constitution was ratified.

(b) Any amendment which is continued in force and effect after July 1, 1987, pursuant to the provisions of subparagraph (a) of this Paragraph shall be continued in force and effect as a part of this Constitution, except that such amendment may thereafter be repealed but may not be amended. The repeal of any such amendment shall be accomplished by local Act of the General Assembly, the effectiveness of which shall be conditioned on its approval by a majority of the qualified voters voting thereon in each of the particular political subdivisions affected by the amendment.

(c) All laws enacted pursuant to those amendments to the Constitution which are not continued in force and

effect pursuant to subparagraph (a) of this Paragraph shall be repealed on July 1, 1987. All laws validly enacted on, before, or after July 1, 1987, and pursuant to the specific authorization of an amendment continued in force and effect pursuant to the provisions of subparagraph (a) of this Paragraph shall be legal, valid, and constitutional under this Constitution. Nothing in this subparagraph (c) shall be construed to revive any law not in force and effect on June 30, 1987.

(d) Notwithstanding the provisions of subparagraphs (a) and (b), the following amendments to the Constitution of 1877 and 1945 shall be continued in force as a part of this Constitution: amendments to the Constitution of 1877 and the Constitution of 1945 which created or authorized the creation of metropolitan rapid transit authorities, port authorities, and industrial areas and which were continued in force as a part of the Constitution of 1976 pursuant to the provisions of Article XIII, Section I, Paragraph II of the Constitution of 1976 and which are in force on the effective date of this Constitution.

(e) Any person owning property in an industrial area described in subparagraph (d) may voluntarily remove the property from the industrial area by filing a certificate to that effect with the clerk of the superior court for the county in which the property is located, but only if the property is located on an island. Once the certificate is filed, the property described in the certificate, together with all public streets and public rights of way within the property, abutting the property, or connecting the property to property outside the industrial area will no longer be in the industrial area and may be annexed by an adjacent city. The filing of a certificate will be irrevocable and will bind the owners, their heirs, and their assigns. The term

"owner" includes anyone with a legal or equitable ownership in property but does not include a beneficiary of any trust or a partner in any partnership owning an interest in the property or anyone owning an easement right in the property.

GA. CONST. of 1945, art. VII, § 10, ¶ 1

SECTION X.

Paragraph I. **Existing Amendments Continued of Force**. Amendments to the Constitution of the State of Georgia of 1877 in effect at the date of the ratification by the voters of the State, of this Constitution, shall continue of full force and effect after the ratification of this Constitution, where such amendments are of merely local, and not, general application, including the amendments pertaining to the Coastal Highway District of this State. There is also continued under this provision in force and effect, amendments to the Constitution of 1877 applicable to counties and cities having a population in excess of a number stated in such amendments, amendments applicable to counties having a city wholly or partly therein with a population in excess of, or not less than a number stated in such amendment, and amendments applicable to cities lying in two counties, where such amendments are in force and effect at the time of the ratification of this Constitution. Provided the amendment of Paragraph I of Section II of Article XI of the Constitution of 1877 proposed by Georgia Laws 1943 page 53 and ratified August 3, 1943, authorizing election by the people of the County Board of Education of Spalding County; prescribing rules of eligibility of members of the Board; providing for

election by the Board of the County Superintendent of Schools shall not be continued of force.

GA. CONST. of 1976, art. XII, § 1, ¶ 1

SECTION I.

Paragraph I. Proposals to amend the Constitution; new Constitution; submission to people. A new Constitution or amendments to this Constitution may be proposed by the General Assembly or by a constitutional convention. The proposal by the General Assembly to provide for a new Constitution or to amend this Constitution shall originate as a resolution in either the Senate or the House of Representatives and, if approved by two-thirds of the members elected to each branch of the General Assembly in a roll call vote, such proposal shall be entered on the Journals of each branch with the "Ayes" and "Nays" taken thereon. Any proposal to amend this Constitution or any proposal for a new Constitution may be amended or repealed by the same General Assembly which adopted such proposal by the affirmative vote of two-thirds of the members elected to each branch of the General Assembly in a roll call vote entered on their respective Journals, if such action is taken at least two months prior to the date of the election at which such proposal is to be submitted.

The Governor, the Attorney General, and the Secretary of State shall meet and determine whether a proposed amendment is general, and if not general, shall determine what political subdivision or subdivisions are directly affected by such proposed amendment. If a proposed

amendment is general, it shall be punished [sic], as provided by law in full, once each week for three consecutive weeks immediately preceding the date of the election at which such proposed amendment is to be submitted, in one newspaper of general circulation in each Congressional District of the State. If such proposed amendment is not general, it shall be published, as provided by law, in full, once each week for three consecutive weeks immediately preceding the date of the election at which such proposed amendment is to be submitted, in one newspaper of general circulation in each county in which the directly affected political subdivision or subdivisions are located. In the event no such newspaper is located in such county, a newspaper in an adjoining county shall be used. A proposal for a new Constitution shall be published in the same manner as proposed general amendments. Any proposed amendment which is general or a proposal for a new Constitution shall be submitted to the people of the entire State at the next general election which is held in the even-numbered years, and if ratified by a majority of the electors qualified to vote for members of the General Assembly voting thereon, such amendment shall become a part of this Constitution or shall become the new Constitution, as the case may be. A proposed amendment which is not general shall be submitted at the next general election which is held in the even-numbered years, but shall only be submitted to the people of the political subdivision or subdivisions directly affected. The votes of the electors in each political subdivision affected shall be counted separately in determining whether such proposed amendment is ratified, and it must be ratified by a majority of the electors qualified to vote for members of the General Assembly voting thereon in each such political subdivision before it shall become a part of this Constitution. The

General Assembly, in the resolution, shall state the language to be used in submitting the proposed amendment or proposal for a new Constitution. When more than one amendment is submitted at the same time, they shall be so submitted as to enable the electors to vote on each amendment separately. A proposal for one or more changes within a single Article may be submitted as a single amendment. A proposal for one or more changes within a single Article and a related change or related changes in one or more other Articles may be submitted as a single amendment. A proposal for a new Article may be submitted as a single amendment. A proposal for a new Article and a related change or related changes in one or more other Articles may be submitted as a single amendment.

GA. CONST. of 1976, art. XIII, § 1, ¶ 2

Paragraph II. Amendments Continued as Part of This Constitution. Amendments to the Constitution of 1877 which were continued in force and effect by Article VII, Section X, Paragraph I of the Constitution of 1945, and which are in force and effect on the effective date of this Constitution shall continue in force and effect as part of this Constitution. Amendments to the Constitution of 1945 which did no [sic] directly affect the whole State and which were required to be ratified in a particular subdivision or subdivisions as well as in the State as a whole, which are in force and effect on the effective date of this Constitution shall continue in force and effect as part of this Constitution. Amendments to the Constitution of 1945 which were ratified pursuant to the provisions of an amendment to article XIII, Section I, Paragraph I ratified at the 1952 general election and found in Georgia Laws

1951, page 681, which are in force and effect on the effective date of this Constitution shall continue in force and effect as part of this constitution. Amendments to the Constitution of 1945 which were ratified subsequent to 1956 but which were not ratified as general amendments, which are in force and effect on the effective date of this Constitution shall continue in force and effect as part of this Constitution. Amendments to the Constitution of 1945 which were ratified subsequent to 1956 and which were ratified as general amendments but which by their terms applied principally to a particular political subdivision or subdivisions, which are in force and effect on the effective date of this Constitution shall continue in force and effect as part of this Constitution. Amendments of the same type provided for in the immediately preceding two sentences of this Paragraph which were ratified at the same time this Constitution was ratified shall continue in force and effect as part of this Constitution.

APPENDIX E – Excerpts from Reply Memorandum in Support of Plaintiff's Motion for Summary Judgment

IN THE SUPERIOR COURT OF MUSCOGEE COUNTY

STATE OF GEORGIA

CM TAX EQUALIZATION FOUNDATION, INC.; HULETTE BOOTH; J. W. FEIGHNER; TERRELL GREEN; BETTIE RUTH HAYNES; MOSES HAYNES; EILEEN HENSON; KENNETH HENSON, JR, EARLE F. LASSETER, SALLY BORK LASSETER, LISA D. MCNARY; FAYE SHERRILL; RON SHERRILL; TED SHORT; PENNY SHORT; CARL J. THOMAS; CONNIE GRAY THOMAS; ERNESTINE WELLS; RICHARD WELLS; WILL WHITE; AMY WHITE; CHRISTOPHER WIGHTMAN; and ASTRID WIGHTMAN; Plaintiffs, v. COLUMBUS-MUSCOGEE COUNTY CONSOLIDATED GOVERNMENT; MUSCOGEE COUNTY BOARD OF TAX ASSESSORS; LULA LUNSFORD HUFF, in her official capacity as Tax	Civil Action No: SU-2000-CV-3256

Commissioner, Muscogee County; and MUSCOGEE COUNTY BOARD OF EQUALIZATION;	)
Defendants	)

REPLY MEMORANDUM IN SUPPORT OF *PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT*

[. . .]

[22] Violation of the Commerce Clause of the United States Constitution

Contrary to the Defendants' assertion, the tax freeze does violate the provisions of the Commerce Clause by providing a property tax exemption for select residents within the County, while simultaneously de lying the same treatment to those who move into the state. They cite *Camps Newfound/Owatonna, Inc. v. Town of Harrison,* 520 U.S. 564 (1997), to support their [23] claim. However, as they acknowledge, the holding in *Camps Newfound* struck down a property exemption that discriminated against out-of-state residents. The Supreme Court rejected analysis suggesting that "articles of commerce" are limited to items and do not include persons or their role in the process of commerce as purchaser of goods or services. "Denial of a tax exemption is explicitly and primarily triggered by engaging in a certain level of interstate commerce." Id. at 570 (citation omitted). Similarly, the tax freeze is a penalty against out-of-state transferees who wish to purchase property, as they will be penalized because of their out-of-state status.

The Defendants then turn to the spurious argument that the tax freeze is merely a local tax that preserves the health and safety of the County's residents. They erroneously rely on *General Motors Corp v Tracy*, 519 U.S. 278 (1997) and *McGoldrick v. Berwind-White Coal Mining Co.*, 309 U.S. 33 (1940), claiming that the tax freeze is a local tax with local benefits that only incidentally involve interstate commerce. Unlike the tax schemes at issue in those cases, the tax freeze is less than a local tax. It is a narrow, insular tax for the benefit of an artificially protected class, one that serves to directly impact interstate commerce by harming homeownership and reducing the ability of the County to raise funds in the interest of the health, safety, morals and welfare of its people. It suppresses the tax revenue available for education, law enforcement, emergency medical services and other social welfare services dependent on tax revenue.

Furthermore, the U.S. Supreme Court's reasoning in Tracy was that the tax did not treat "similarly situated" persons differently nor did it protect intra-state sellers over out-of-state sellers. In the case of the tax freeze, similarly situated persons – homeowners – are treated [24] differently based on the duration of residency. Also, the tax freeze inherently protects intra-County homeowners over those who would move to the County and participate in homeownership.

The tax freeze is not remote; it is a closely-targeted measure directly impacting interstate commerce. The Defendants claim a future benefit to all citizens who purchase property under the tax freeze. This is self-evident and not called into question. What is disputed is the impact on the majority of current citizens and potential citizens who will never have the benefit of its

protection. The only benefit provided to homeowners not protected by the lowest valuations of the tax freeze is the prescient knowledge that they will continue to pay the cost for their insulated neighbors.

Finally, the Defendants' argument of lack of intent is specious, as it was certainly foreseeable and even logical that a tax freeze for a narrow group would impact out-of-state business and consumers. By artificially increasing the taxes on newcomers and-reducing the tax revenue, the effect would necessarily harm both business and consumers.[1]

Violation of the Right to Travel Protection under the United States Constitution

The right to travel, the inherent meaning of the right to move freely between the states, is certainly "firmly embed led in our jurisprudence." *Saenz v. Roe,* 526 U.S. 489, 498 (1999). [25] The Defendants' argument, then, is that a prohibitive tax that artificially inflates the costs of homeownership for newcomers does not impugn this right. Clearly, this is a fallacious assertion. The right to travel provides that "those travelers who elect to become permanent residents [have] the right to be treated like other

[1] It is doubtful whether invalidation of the tax freeze can be rested solely on Plaintiffs' complaint under the Commerce Clause of the United States Constitution. The same may be said of Plaintiffs' positions on interference with the Right to Travel and violation of the Guaranty Clause of the United States Constitution. Each is of significance, however, and together they emphasize the unjustifiable consequences of the "double dip" created by the tax freeze at the expense of commerce, travelers and those bearing the burden of extraordinary financial benefits given to the early homeowners.

citizens of that State." *Id.* at 501. As much as the ability to actually change location, the ability to own and establish a home in a new state of residence is intrinsic to the right to travel. *Attorney Gen. v. Soto-Lopez,* 476 U.S. 898, 904 (1986), and *Saenz* set a firm standard that the timing of a resident's arrival can not be the basis for treating the newcomer differently, which is the necessary effect of the tax freeze. Yet, the tax freeze places 1983 as the time after which a new resident is denied the benefits afforded to others who lived in the County and owned homes at that date.

[. . .]

Supreme Court, U.S.
FILED
SEP 15 2003
OFFICE OF THE CLERK

No. 03-121

IN THE

Supreme Court of the United States

CM TAX EQUALIZATION FOUNDATION, INC., *et al.*,

Petitioners,

v.

COLUMBUS-MUSCOGEE COUNTY CONSOLIDATED GOVERNMENT, *et al.*,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF GEORGIA

REPLY BRIEF

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16 pp

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Respondents' Brief in Opposition to the petition for certiorari fails to confront the gravity of the constitutional issues presented by the tax freeze. Instead of first confronting Petitioners' claim that the additional hurdles required for repealing the tax freeze violate the Fourteenth Amendment and Petitioners' claim that the tax freeze unconstitutionally denies Muscogee County residents rights available to every other Georgia citizen, Respondents ask the Court to believe that this case is nothing more than *Nordlinger* redux. But, as discussed in the Petition and below, this case presents the Court with questions that go well beyond the Court's decision in *Nordlinger* upholding California's Proposition 13.

I. Petitioners' Equal Protection Challenge to the LCA Process is Properly Before the Court.

Petitioners have always claimed that the continued operation of the tax freeze LCA violates the Equal Protection Clause. Petitioners' argument that the Equal Protection violation arises from the imposition of more stringent standards for repealing the LCA accordingly is properly before the Court. "Once a federal claim is properly presented, a party can make any argument in support of that claim; parties are not limited to the precise arguments they made below." *Yee* v. *Escondido*, 503 U.S. 519, 534 (1992).

Furthermore, Respondents miss the mark with their claim that the current standards for repealing the LCA should be compared to the standards that existed when the LCA was originally enacted in 1982. In 1983

a new Georgia Constitution took effect. That Constitution automatically nullified the LCA effective July 1, 1987. The 1983 Constitution, however, allowed the Georgia General Assembly to continue the Muscogee LCA in force by passing a local act of the legislature (with or without a referendum). Thus, by passing such a local act in 1986, the Georgia General Assembly effectively re-enacted the LCA. But it did so without a local referendum. Repealing the freeze, on the other hand, imposes an additional hurdle by requiring a referendum. That the tax freeze affects an ever-shifting minority of Muscogee County citizens further compounds the difficulties faced by Muscogee County citizens who wish to see the freeze repealed. No legitimate state interest justifies shielding the LCA – which Respondents admit is an anachronism – from the democratic process.

II. The Tax Freeze LCA Arbitrarily and Capriciously Denies Muscogee County Residents Rights Available to Other Georgians.

Respondents do not dispute that, but for its status as an LCA, the tax freeze would violate the Georgia Constitution. By singling out Muscogee County residents for a lower level of constitutional protection, the tax freeze LCA violates the Equal Protection Clause. *See Romer* v. *Evans*, 517 U.S. 620, 633 (1996) ("A law declaring that in general it shall be more difficult for one group of citizens than for all others to seek aid from the government is itself a denial of equal protection of the laws in the most literal sense.").

Moreover, Respondents offer no real response to this challenge. Their assertion that the freeze affects only county, not state, revenues misses the point. In any other Georgia county, Georgia's Constitution would protect taxpayers from being taxed different amounts on nearly identical houses. That state taxes are assessed as required by Georgia's Constitution has no bearing on this case.

Finally, none of the other LCAs cited by Respondents deny county residents the right, provided for in the Georgia Constitution, to have comparably valued property taxed at the same rate. The exemption of Muscogee County from this otherwise applicable constitutional protection is, as discussed in the Petition, a violation of the Equal Protection Clause of the United States Constitution.

III. Petitioners' Privileges and Immunities Claim is Properly Before the Court.

Respondents would have the Court ignore Petitioners' argument that the Muscogee County LCA denies newcomers rights protected by the Privileges and Immunities Clause, supposedly because Petitioners did not cite specifically the Privileges and Immunities Clause in their complaint or in their arguments to the courts below. But Petitioners did claim that the tax freeze violates the right to travel, a claim that necessarily implicates the Privileges and Immunities Clause. *See Saenz* v. *Rose*, 526 U.S. 489, 502-03 (1999) (discussing close relationship between right to travel and Privileges and Immunities Clause); *Zobel* v. *Williams*, 457 U.S. 55, 78-79 (1982) (O'Connor, J.,

concurring) ("Article IV's Privileges and Immunities Clause has enjoyed a long association with the rights to travel and migrate interstate.").

Even if Petitioners' complaint did not mention the Privileges and Immunities Clause by name, Petitioners' arguments before the courts below relied on the interpretation of the Privileges and Immunities Clause articulated by Justice O'Connor in *Zobel*. *See Yee*, 503 U.S. at 534.

IV. Petitioners' Right to Travel Claim is Ripe.

In *Nordlinger* v. *Hahn*, 505 U.S. 1 (1992), this Court pointedly did not address whether California's Proposition 13 impermissibly infringes on the right to travel. *Id.* at 10-11. The Court refused to do so because, prior to purchasing her home, Stephanie Nordlinger had lived in California. *Id.*

Petitioners' challenge to the Muscogee LCA gives the Court the opportunity to address the question left unanswered by *Nordlinger*. Petitioners Ron and Faye Sherrill, who bought a home in Muscogee County after moving from out of state, have standing to raise this claim. The house which they purchased in 1998 is valued for property tax purposes at a higher amount than are many houses of comparable value but which had their valuations frozen before 1998. Thus, the Sherrills pay higher ad valorem taxes on their home than do owners of comparably valued homes in Muscogee County, and they do so as a result of their decision to migrate into Muscogee County from out of state.

Respondents argue that the Sherrills lack standing because they did not appeal their tax assessment to the Muscogee County Board of Equalization. Respondents ignore that O.C.G.A. § 48-5-311, which authorizes appeals to county boards of equalization, allows individuals to appeal their assessments only "as to matters of taxability, uniformity of assessment, and value." *Id.* Petitioners raise no issues that are within the jurisdiction of the Muscogee County Board of Equalization. They do not complain that their properties are being over-valued for ad valorem tax purposes. Nor are they complaining about the accuracy or uniformity with which the tax freeze has been implemented. Rather, Petitioners challenge the constitutionality of the entire system of ad valorem taxation in Muscogee County.

Because the Board of Equalization may hear appeals only regarding issues of taxability, value, uniformity, and denial of homestead exemptions, the Muscogee County Board of Equalization would have had no jurisdiction to consider Petitioners' constitutional challenges, and consequently Petitioners did not need to appeal their assessments to the Board. *See Griffeth* v. *Principal Mut. Life Ins. Co.*, 533 S.E.2d 126, 127 (Ga. App. 2000) (holding that where a party is not challenging an administrative decision, there is no requirement that it exhaust administrative remedies); *cf. Bailey* v. *Wilkes*, 291 S.E.2d 418, 421 (Ga. App. 1982) ("'[W]here the question involved is within the jurisdiction of an administrative agency and the question demands the exercise of administrative discretion requiring the special knowledge and experience of the agency, no action for damages will lie

prior to a decision by the agency.'") (quoting 73 C.J.S. *Public Administrative Bodies and Procedures* § 43 at 358). As the trial court aptly stated, "Georgia law is clear that courts will not require a plaintiff to exhaust a futile administrative remedy."[1] (App. 21a.)

Respondents cite two Georgia cases, *North Fulton Community Hospital, Inc.* v. *State Health & Planning Development Agency*, 310 S.E.2d 764 (Ga. App. 1983), and *Sparks* v. *Caldwell*, 261 S.E.2d 590 (Ga. 1979), for the proposition that Georgia law required Petitioners to appeal their assessments to the Board of Equalization. (Opp. Cert. at 24.) Those cases, however, involved plaintiffs who had appealed administrative decisions under the Administrative Procedure Act, O.C.G.A. § 50-13-1. The courts in *North Fulton* and *Sparks* concluded that because the plaintiffs had not presented their constitutional issues during their arguments before the administrative agencies, they could not raise them when subsequently appealing those agencies' decisions to the superior court. Those cases do not hold that plaintiffs challenging the constitutionality of an entire tax system must frivolously bring claims before an administrative agency that has no authority to address their grievances.

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[1] Counsel for Respondents admitted as much in the trial court, stating that "Georgia law is clear that . . . the courts will not require a plaintiff to exhaust a futile administrative remedy, and I think that's basically what would have happened in this case." (See Petitioners' Supp. App. 3sa.)

V. The Right to Travel Prohibits More Than Durational Residency Requirements.

The Alaska law struck down by this Court in *Zobel* v. *Williams*, 457 U.S. 55 (1982), was not, as Respondents claim, a durational residency requirement. Durational residency requirements condition the receipt of a state-provided benefit on the recipients' having lived in the state for a defined amount of time. *See, e.g., Mem'l Hosp.* v. *Maricopa County*, 415 U.S. 250 (1974). To the contrary, under the law struck down in *Zobel*, every Alaska resident was entitled to receive a dividend from Alaska's Permanent Fund, regardless how long he or she had lived in the state. 457 U.S. at 58-59.

This Court acknowledged that Alaska's statute was not a durational residency requirement: "The Alaska dividend distribution law is quite unlike the durational residency requirements we examined in [*Sosna* v. *Iowa*, 419 U.S. 393 (1975); *Memorial Hospital* v. *Maricopa County*, 415 U.S. 250 (1974); *Dunn* v. *Blumstein*, 405 U.S. 330 (1972); and *Shapiro* v. *Thompson*, 394 U.S. 618 (1969)]." 457 U.S. at 58. Yet the law violated newcomers' right to travel because it "create[d] fixed, permanent distinctions between an ever-increasing number of perpetual classes of concededly bona fide residents, based on how long they have been in the State." *Id.* at 59.

The right to travel does more than invalidate durational residency requirements; it also prohibits "fixed date, and fixed point residence requirements, which treat established residents differently based on

the time they migrated into the State." *Attorney General* v. *Soto-Lopez*, 476 U.S. 898, 903 n.3 (1986). Like the Alaska statute struck down in *Zobel*, Muscogee County's tax freeze creates an ever increasing number of perpetual classes based only on the length of homeownership in the County. The tax freeze undeniably "uses [a] classification which serves to penalize the exercise of [the right to travel]," *id.* 476 at 903, and as such it is unconstitutional.[2]

VI. *Allegheny*, not *Nordlinger*, Applies Here.

Respondents fail to acknowledge the important differences between this case and *Nordlinger*. Whereas *Nordlinger* dealt with a state-wide decision to implement, through a constitutional amendment, an acquisition value system, this case deals with one county's exemption from an otherwise applicable tax regime that requires taxation based on current-market-value. As such, this case is much closer to the situation presented in *Allegheny* where one county decided to adopt an acquisition value system that was contrary to West Virginia's requirement that property taxes be based on current-market-value.

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[2] Like the statute in *Zobel*, the civil service preference at issue in *Soto-Lopez* was not a durational residency requirement. It did not matter whether the person applying for the preference had recently become a New York resident; all that mattered was whether the applicant had been a New York resident at the time he entered the armed forces. *Id.* at 900 n.1 (quoting the relevant New York constitutional provision). In other words, someone who recently had moved back into New York could qualify for the preference as long as he had been a New York resident at the time he entered the armed forces.

Furthermore, Respondents' attempts to align this case with *Nordlinger* only serve to highlight why the tax freeze is palpably different from California's Proposition 13. The tax freeze does not protect tax payers' reliance interests because it does not prevent the county from raising millage rates – notwithstanding Respondents' homage to the political process. It does not allow for gradual increases in a property's frozen value so that disparities do not grow unchecked forever. Lastly, the freeze has been coupled with an "inflation adjustment," a double dip which causes some tax-payers to pay more than forty times as much in taxes as do owners of comparable properties. (App. 57a.) No legitimate state interest justifies such a grotesquely unfair tax system.

Respectfully submitted,

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SUPPLEMENTAL APPENDIX

SUPPLEMENTAL APPENDIX A – EXCERPTS FROM TRANSCRIPT OF PROCEEDINGS BEFORE HON. GEORGE M. PEAGLER, SUPERIOR COURT OF MUSCOGEE COUNTY, MARCH 14, 2001

IN THE SUPERIOR COURT
OF MUSCOGEE COUNTY
STATE OF GEORGIA

CIVIL ACTION NO.: SU-2000-CV-3256

CM TAX EQUALIZATION, INC. et al.

v.

COLUMBUS-MUSCOGEE COUNTY CONSOLIDATED GOVERNMENT, et al.

MARCH 14, 2002
HON. GEORGE M. PEAGLER, JR., PRESIDING
SUMTER COUNTY COURTHOUSE
AMERICUS, GEORGIA

BRENDA C. BROWN, CCR

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[. . .]

[105]THE COURT: But how do you respond to the plaintiff's argument that under O.C.G.A. 48-5-311, you really only appeal to the Board for issues of taxability, uniformity of assessment and value, and that really doesn't go to the constitutionality issue that's being attacked here?

MR. PALMER: I agree with that for a different reason. Because it's administrative appeal, and Georgia law is clear that you're not going to – the courts will not require a plaintiff to exhaust a futilely administrative remedy, and I think that's basically what would have happened in this case. They would have appealed that issue, and whether it's a – whether it's an issue of their appraisal or whether it's a constitutional issue, we know what the answer was going to be.